



# California Regulatory Notice Register

REGISTER 2009, NO. 19-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

MAY 8, 2009

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

CALIFORNIA REGULATORY NOTICE REGISTER (USPS 002-931), (ISSN 1041-2654) is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by Barclays, a subsidiary of West, a Thomson Reuters Business, and is offered by subscription for \$205.00 (annual price). To order or make changes to current subscriptions, please call (800) 888-3600. "Periodicals Postage Paid in Saint Paul, MN." **POSTMASTER:** Send address changes to the: CALIFORNIA REGULATORY NOTICE REGISTER, Barclays, a subsidiary of West, a Thomson Reuters Business, P.O. Box 2006, San Francisco, CA 94126. The Register can also be accessed at <http://www.oal.ca.gov>.

**PROPOSED ACTION ON  
REGULATIONS**

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**TITLE 2. STATE LANDS COMMISSION**

**NOTICE OF PROPOSED  
REGULATORY ACTION**

**TITLE 2. ADMINISTRATION  
DIVISION 3. STATE PROPERTY  
OPERATIONS**

**CHAPTER 1. STATE LANDS COMMISSION  
ARTICLE 4.7. PERFORMANCE STANDARDS  
FOR THE DISCHARGE OF BALLAST WATER  
FOR VESSELS OPERATING IN  
CALIFORNIA WATERS**

The California State Lands Commission (the Commission) proposes to amend the regulations as described below after considering all comments, objections or recommendations regarding the proposed action.

**PROPOSED REGULATORY ACTION**

The Commission proposes to amend Sections 2291, 2292, and 2294, and adopt Section 2297 under Article 4.7 in Title 2, Division 3, Chapter 1 of the California Code of Regulations (CCR). These sections would amend regulations that established performance standards for the discharge of ballast water for vessels operating in California waters. The proposed regulatory action would clarify inconsistencies between the governing statute (Public Resources Code (PRC) Section 71205.3) and the existing regulatory text. The proposed regulatory action would also add requirements for vessels to install ballast water sampling facilities (i.e. ports) for collection of ballast water samples in order to verify compliance with the performance standards, as required by PRC Section 71206.

**WRITTEN COMMENT PERIOD**

Any interested person or his or her authorized representative may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes at 5:00 p.m. on June 22, 2009. All written comments must be received at the Commission, by that time. Written comments should be submitted to:

Ravindra Varma  
Supervisor, Planning Branch  
California State Lands Commission  
Marine Facilities Division  
200 Oceangate, Suite 900  
Long Beach, CA 90802-4246

Written comments may also be submitted by facsimile at (562) 499-6317 or by e-mail to varmar@slc.ca.gov.

**PUBLIC HEARING**

The Commission has not scheduled a public hearing on this proposed action. However, the Commission will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

**AUTHORITY AND REFERENCE**

PRC Section 71201(d) describes the State program to regulate discharges of ballast water in order to limit the introduction of nonindigenous species. In enforcing the provisions of the Act, the Commission is authorized to adopt the proposed regulations, which would implement, interpret and make specific PRC Section 71205.3 and PRC Section 71206.

**INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW**

PRC Section 71205.3 requires the Commission to adopt regulations governing interim and final performance standards for the discharge of ballast water. Article 4.7 was approved in October 2007 and implements California's performance standards for the discharge of ballast water.

PRC Section 71205.3 was amended in 2008 to delay the initial implementation of the performance standards for vessels with a ballast water capacity of less than 5000 metric tons. Accordingly, Article 4.7 was amended to ensure consistency between the statute and regulation.

The proposed regulation would further implement and make specific the performance standards for the

discharge of ballast water under PRC Section 71205.3, and would specify the equipment for sample collection and compliance verification as required by PRC Section 71206. Without the regulations, the purpose of the Act as described in PRC Section 71201(d) cannot be achieved. Specifically:

Section 2291(c) is repealed to eliminate confusion about when the performance standards shall be implemented.

Section 2292, as amended, would narrowly define several key terms that are used throughout the language of the regulation to describe management requirements and regulation applicability. These definitions ensure that the performance standards for the discharge of ballast water are clear to the shipping industry and compliance occurs as intended by the regulation.

Section 2294, as amended, would clarify and align the implementation schedule for the interim performance standards for ballast water discharges as described in Section 2294 with the implementation schedule set forth in PRC Section 71205.3.

Section 2297 would add requirements for vessels to install ballast water sampling facilities (i.e. ports) for collection of ballast water samples in order to verify compliance with the performance standards, as required by PRC Section 71206.

#### DIFFERENCES FROM FEDERAL REGULATIONS

Recognizing the severity of the invasive species problem, the federal government implemented a mandatory national ballast water management and reporting program in September 2004 for vessels entering the United States. However, this mandatory program does not include performance standards for the discharge of ballast water. The transport of ballast water in marine vessels is recognized as a major mechanism by which aquatic nonindigenous species (NIS) are spread.

Current California law requires that vessels manage ballast water to reduce the discharge of NIS into California waters. The performance standards for the discharge of ballast water prescribed by Article 4.7 are necessary to minimize the transport of NIS into and throughout the waters of the State of California.

California's performance standards set limits for organism concentration at discharge, and thus ballast water samples must be collected as close to the point of discharge as possible. This type of sample collection requires a sampling facility (or port) on the ballast water discharge line. Because the federal program has no specific requirements for vessels to install sample facilities for ballast water sample collection, the proposed regulations are necessary for California to effectively implement the performance standards for the discharge of

ballast water, and to ensure that samples are collected in a manner that minimizes organism mortality in order to verify compliance with the performance standards.

#### SMALL BUSINESS DETERMINATION

The Commission has determined that these regulations do not affect small businesses as defined in Government Code (Gov. C.) Section 11342.610 because all affected businesses are commercial maritime transport owners and operators, as specified under Gov. C. Section 11342.610(c)(7) and having annual gross receipts of more than \$1,500,000.

#### ESTIMATED COSTS TO THE STATE

No costs to the State would be incurred in implementing and enforcing these proposed regulations. The programs mandated by the Act are funded exclusively by the Marine Invasive Species Control Fund through fees collected from the owners of vessels subject to the Act.

#### DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None.  
Costs or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Part 7 (commencing with section 17500) of Division 4 of the Government Code: None.

Other non-discretionary cost or savings imposed upon local agencies: None.

Costs or savings in federal funding to the state: None.

Cost impact on private persons or directly affected businesses: Limited information is available from ballast water treatment technology developers and vessel owners and operators about the cost of installing sampling facilities on board vessels. Initial estimates place the cost at less than \$5000. Therefore, we have determined that the proposed regulations will not have a significant cost impact on private persons or directly affected businesses.

Creation or elimination of jobs within the State of California: The Commission has determined that the proposed regulations will not have a significant impact on the creation or elimination of jobs within the State of California.

Creation of new businesses or the elimination of existing businesses within the State of California: The Commission has determined that the proposed regulations will not have a significant impact on the creation or elimination of businesses within the State of California.

Expansion of businesses currently doing business within the State of California: The Commission has de-

terminated that the proposed regulations would not have a significant impact upon expansion of businesses currently doing business within the State of California.

The Commission has made an initial determination that the action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Significant effect on housing costs: None.

## CONSIDERATION OF ALTERNATIVES

In accordance with Gov. C. Section 11346.5, sub. (a)(13), the Commission must determine that no alternative considered by it would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The Commission invites interested parties to submit proposals that may be equally effective and less burdensome. The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period or at a public hearing, if one is requested.

## CONTACT PERSON

Inquiries concerning the substance of the proposed action may be directed to:

Maurya B. Falkner  
Environmental Program Manager I  
State Lands Commission  
Marine Facilities Division  
100 Howe Avenue, Suite 100—South  
Sacramento, CA 95825—8202  
Telephone: (916) 574—2568

Or to:

Mark A. Meier  
Senior Staff Counsel  
State Lands Commission  
100 Howe Avenue, Suite 100 South  
Sacramento, CA 95825—8202  
Telephone: (916) 574—1853

Requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based should be directed to:

Ravindra Varma  
Supervisor, Planning Branch  
State Lands Commission  
Marine Facilities Division  
200 Oceangate, Suite 900  
Long Beach, CA 90802—4246  
Telephone: (562) 499—6400  
E-Mail: varmar@slc.ca.gov

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at either of the above addresses. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the initial statement of reasons. These documents are also available on the Commission's website. Copies may also be obtained by contacting Ravindra Varma at the address or telephone number listed above during the normal business hours of the State.

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following any requested hearing and considering all timely and relevant comments received, the Commission may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the Commission adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Ravindra Varma at the address indicated above. The Commission will accept written comments on the modified regulations for 15 days after the date on which they are made available. The modified text will also be available on the Commission's website.

## AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ravindra Varma at the address or telephone number listed above.

## AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations,



can be accessed through the Commission's website at:  
[http://www.slc.ca.gov/Spec\\_Pub/MFD/Ballast\\_Water/Ballast\\_Water\\_Default.html](http://www.slc.ca.gov/Spec_Pub/MFD/Ballast_Water/Ballast_Water_Default.html)

## **TITLE 13. CALIFORNIA AIR RESOURCES BOARD**

### **NOTICE OF PUBLIC HEARING TO ADOPT PROPOSED AB 118 ENHANCED FLEET MODERNIZATION PROGRAM REGULATION (CAR SCRAP)**

The Air Resources Board (ARB or the Board) will conduct a public hearing at the time and place noted below to consider adoption of the proposed AB 118 Enhanced Fleet Modernization Program Regulation (Car Scrap).

DATE: June 25–26, 2009

TIME: 9:00 a.m.

PLACE: California Environmental Protection  
Agency  
Air Resources Board  
Byron Sher Auditorium  
1001 I Street  
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., June 25, 2009, and may continue at 8:30 a.m., on June 26, 2009. This item may not be considered until June 26, 2009. Please consult the agenda for the meeting, which will be available at least 10 days before June 25, 2009, to determine the day on which this item will be considered.

If you require special accommodations or language needs, please contact the Clerk of the Board at (916) 322–5594 or by fax at (916) 322–3928 as soon as possible, but no later than 10 business days before the scheduled board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

### **INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW**

#### **Sections Affected:**

Proposed adoption of California Code of Regulations, title 13, new sections 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, and 2630.

#### **Background:**

In October 2007, Governor Schwarzenegger signed Assembly Bill 118 (AB 118 [Nunez, Statutes 2007, chapter 750]), into law. This legislation provides approximately \$200 million annually for new programs to improve air quality through the development and use of advanced technologies as well as alternative and renewable fuels. The legislation includes \$30 million annually for an Enhanced Fleet Modernization Program (EFMP).

The EFMP will augment the State's existing State voluntary accelerated vehicle retirement program, referred to as the Consumer Assistance Program.

The focus of the EFMP is to augment existing retirement programs and provide funding to retire the highest polluting vehicles in the areas with the greatest air quality problems. The legislation also directs that the program consider flexible compensation related to the replacement of the vehicles being retired, and requires ARB to consider cost-effectiveness and impacts on disadvantaged and low-income populations.

#### **Proposed Regulation:**

There are two main features to the proposed rulemaking. First, the proposal would remove existing State requirements that vehicles must be subject to and fail Smog Check in order to participate. These modifications greatly expand the vehicle population that can be retired in any given year and are projected to result in the retirement of up to 15,000 vehicles annually when fully funded. Incentives for vehicle retirement would be available statewide at \$1,000 per vehicle or \$1,500 for low-income participants.

Second, staff is proposing a pilot voucher program that would target the highest-emitting vehicles and ensure their replacement with newer, cleaner vehicles. Solicited consumers would retire their vehicle at a dismantler and receive both immediate compensation for vehicle retirement and additional incentives in the form of a redeemable voucher to be used at participating vehicle dealerships. Staff proposes that the voucher compensation be \$2,000 to \$2,500 per vehicle depending on income level. Staff is also proposing that income-eligible participants be able to choose from a wider pool of replacement vehicles.

To start, the pilot voucher program would only be available in the South Coast and San Joaquin Valley air basins, which are areas with specific vehicle retirement commitments in the State Implementation Plan and areas with the worst air quality. A summary of the proposed incentives is provided in the table below.

Consumer	Retirement Incentive	Replacement Voucher	Total Incentives	Replacement Model Years (rolling)
All	\$1,000	\$2,000	\$3,000	Newest 4 Model Years
Income-Eligible	\$1,500	\$2,500	\$4,000	Newest 8 Model Years

Total emission benefits for the program are estimated to be approximately 1.6 tons of hydrocarbons and oxides of nitrogen each day when fully funded.

#### COMPARABLE FEDERAL REGULATIONS

There are no federal regulations comparable to the proposed regulation. The proposed regulation defines the EFMP structure and establishes administrative and implementation requirements. Participation by individuals and businesses in the EFMP is strictly voluntary.

#### AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: "Staff Report: Initial Statement of Reasons for Proposed Rulemaking — Proposed Regulations for an Enhanced Fleet Modernization Program (Car Scrap)."

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing on June 25, 2009.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB's website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to Mr. Tom Evashenk, Air Resources Engineering Associate, at (916) 445-8811 or Mr. John Ellis, Air Resources Engineer, at (626) 350-6516.

Further, the agency representative and designated back-up contact persons, to whom nonsubstantive inquiries concerning the proposed administrative action may be directed, are Ms. Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, or Ms. Trini Balcazar, Regulations Coordinator, (916) 445-9564. The Board has

compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at: [www.arb.ca.gov/regact/2009/carscrap09/carscrap09.htm](http://www.arb.ca.gov/regact/2009/carscrap09/carscrap09.htm).

#### COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would create slight costs to ARB in the implementation of the EFMP. Funding for these positions has been included in the California State Budget. Except for these costs, the proposed regulatory action would not create costs or savings to any other State agency, or in federal funding to the State, costs or mandate to any local agency or school district whether or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The EFMP is purely voluntary. Businesses, individuals, and public agencies will not participate unless it is economically beneficial for them to do so.

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action—which sets implementation requirements for the EFMP—would have a slight positive impact on the creation of jobs within the State of California. The types of businesses that will benefit include licensed dismantlers and new or used car dealerships. For dismantlers, this program will increase the number of vehicles scrapped and for car dealerships stimulate vehicle sales, thus increasing revenues to both entities. An assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would affect small businesses. Although participation in the EFMP is strictly voluntary and there are no mandated requirements, small businesses that choose to participate in the EFMP would be affected by enforcement of the regulation.

The proposed regulation will not impose reporting requirements on private persons or businesses.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and in writing or by email before the meeting. To be considered by the Board, written comments, not physically submitted at the meeting, must be received **no later than 12:00 noon, Pacific Standard Time, June 24, 2009**, and addressed to the following:

Postal mail: Clerk of the Board, Air Resources Board  
1001 I Street, Sacramento, California  
95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Facsimile submittal: (916) 322-3928

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may be-

come available via Google, Yahoo, and any other search engines.

The Board requests, but does not require, that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

#### STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in Health and Safety Code sections 39600, 39601, and 44125. This action is proposed to implement, interpret and make specific Health and Safety Code sections 39600, 39601, and 44125.

#### HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted, and the public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

### TITLE 13. CALIFORNIA HIGHWAY PATROL

#### NOTICE OF PROPOSED REGULATORY ACTION

TITLE 13, CALIFORNIA CODE OF REGULATIONS  
DIVISION 2, CHAPTER 6.5, AMEND ARTICLE 1, SECTION 1201; ARTICLE 3, SECTIONS 1212 AND 1213.

#### DRIVERS' HOURS OF SERVICE — MOTION PICTURE PRODUCTION (CHP-R-09-14)

The California Highway Patrol (CHP) proposes to amend the Motor Carrier Safety Regulations contained



in Title 13, California Code of Regulations (13 CCR) to be consistent with the current version of adopted federal regulations in Title 49, Code of Federal Regulations (49 CFR), Part 395.

#### INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

Title 13 CCR, Division 2, Chapter 6.5 contains the CHP Motor Carrier Safety Regulations. Article 1, Sections 1200 through 1202.2, contain the Definitions and General Provisions; Article 3, Sections 1212 through 1218, contain the General Driving Requirements.

This rulemaking action adopts an exemption, for the motion picture industry, that allows drivers under specific conditions, to operate using intrastate hours of service rules in effect prior to November 11, 2007, which is essentially identical to a recently adopted exemption, for the motion picture industry, by the Federal Motor Carrier Safety Administration. By adopting the essentially identical regulations, this rulemaking action will enhance the competitiveness of California by eliminating or modifying, to the extent possible, regulations that represent a negative impact on businesses by conflicting with updated federal regulations. Also, this rulemaking will allow the CHP to comply with the requirements of California Vehicle Code (VC), Section 34501.2, and remain consistent with regulations adopted by the United States Department of Transportation. This rulemaking also updates 13 CCR references concerning recently adopted regulation and adds additional clarifying language.

#### PUBLIC COMMENTS

Any person may submit written comments on the proposed action via facsimile at (916) 446-4579 or by writing to:

California Highway Patrol  
Commercial Vehicle Section—062  
ATTN.: Gary Ritz  
PO Box 942898  
Sacramento, CA 94298-0001

Written comments will be accepted until 5:00 p.m., June 22, 2009.

No public hearing has been scheduled. If any person desires a public hearing, a written request must be received by the CHP, Commercial Vehicle Section (CVS), no later than 15 days prior to the close of the written comment period.

#### AVAILABILITY OF INFORMATION

The CHP has available for public review an initial statement of reasons for the proposed regulatory action,

the information upon which this action is based (the rulemaking file), and the proposed regulation text. Requests to review or receive copies of this information should be directed to the CHP at the above address, by facsimile at (916) 446-4579 or by calling the CHP, CVS, at (916) 445-1865. Facsimile requests for information should include the following information: the title of the rulemaking package, the requester's name, proper mailing address (including city, state and zip code), and a daytime telephone number in case the information is incomplete or illegible.

The rulemaking file is available for inspection at the CHP, Commercial Vehicle Section, 444 North Third Street, Suite 310, Sacramento, CA 95811. Interested parties are advised to call for an appointment.

All documents regarding the proposed action are also available through our website at [www.chp.ca.gov/regulations](http://www.chp.ca.gov/regulations).

Any person desiring to obtain a copy of the adopted text and a final statement of reasons may request them at the above noted address. Copies will also be posted on our website.

#### CONTACT PERSON

Any inquiries concerning the written materials pertaining to the proposed regulations should be directed to Mr. Gary Ritz, or Mr. Greg Bragg, CHP, CVS, at (916) 445-1865. Inquiries regarding the substance of the proposed regulations should also be directed to Mr. Ritz or Mr. Bragg.

#### ADOPTION OF PROPOSED REGULATIONS

After consideration of public comments, the CHP may adopt the proposal substantially as set forth without further notice. If the proposal is modified prior to adoption and the change is not solely grammatical or nonsubstantive in nature, the full text of the resulting regulation, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date of adoption.

#### FISCAL AND ECONOMIC IMPACT

The CHP has made an initial determination that this proposed regulatory action: (1) will have no effect on housing costs; (2) will not impose any new mandate upon local agencies or school districts; (3) involves no nondiscretionary or reimbursable costs or savings to any local agency or school district, nor costs or savings to any state agency, or federal funding to the state; (4) will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of

California; and (5) will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. The regulated community is encouraged to respond during the comment period of this regulatory process if significant impacts are identified.

#### **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**

The CHP is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### **EFFECT ON SMALL BUSINESSES**

The CHP has determined that the proposed regulation will not affect small business. The overlying statute (34501.2 VC) mandates California's drivers' hours of service regulations applicable to all drivers of commercial motor vehicles, remain consistent with federal drivers' hours of service regulations. This proposal will amend those regulations as required by statute. However, the regulated community is encouraged to respond during the public comment period of this regulatory process if significant impacts are identified.

#### **ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13), the CHP must determine that no reasonable alternative considered by the CHP, or that has otherwise been identified and brought to the attention of the CHP, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The CHP invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

#### **AUTHORITY**

This regulatory action is being taken pursuant to Sections 31401, 34501, 34501.5 and 34508 VC; and Section 39831 of the Education Code (EC).

#### **REFERENCE**

This action implements, interprets, or makes specific Sections 545, 546, 31401, 34003, 34501, 34501.2, 34501.5 and 34508 VC; and Section 39831 EC.

#### **DEPARTMENT OF CALIFORNIA HIGHWAY PATROL**

D. A. VERTAR, Chief  
Enforcement Services Division

### **TITLE 13. DEPARTMENT OF MOTOR VEHICLES**

#### **NOTICE IS HEREBY GIVEN**

The Department of Motor Vehicles (the department) proposes to amend sections 15.00 and 15.03 in Chapter 1, Division 1, Article 2.0 of Title 13, California Code of Regulations, relating to Driver Licenses and Identification Cards.

#### **PUBLIC HEARING**

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 p.m., fifteen (15) days prior to the close of the written comment period.

#### **DEADLINE FOR WRITTEN COMMENTS**

Any interested party or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 p.m., **JUNE 22, 2009**, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulation.

#### **AUTHORITY AND REFERENCE**

The department proposes to adopt this regulation under the authority granted by Section 1651 of the Vehicle Code in order to implement, interpret, or make specific sections 12506, 12800, 12801.5, 12805, 12816, 13000, 13002 and 14100.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Department of Motor Vehicles (department) proposes to amend sections 15.00 and 15.03 in Article 2.0, related to Driver Licenses and Identification Cards.

Vehicle Code sections 12800 and 13000 govern the issuance of driver licenses and identification cards. Ve-

hicle Code section 12801.5 requires the department to verify a driver license or identification card applicant's presence in the United States is authorized under federal law (legal presence).

Federal Regulations establish minimum standards for State-issued driver licenses and identification cards including application information used to establish the identity and immigration status of a non-resident applicant before a driver license or identification card can be issued. Part 37 of the Code of Federal Regulations prohibits the department from issuing a temporary or limited-term driver license or identification card for a period longer than one year, when the accompanying federal documentation lacks an expiration date.

Section 15.03(e) of Article 2.0, California Code of Regulations, allows the department to issue a driver license or identification card to an applicant for a term of expiration to be one year from the date of issuance of the Department of Homeland Security (DHS) document provided to the department to establish the applicant's legal presence in the United States.

Upon review, it has come to the attention of the department that this section, as currently written, is unclear and unenforceable. The department proposes to amend subsection 15.03(e) to ensure the provisions are clear to the affected public and implementable by the department.

This proposal also makes a non-substantive amendment to section 15.00 of this article.

#### FISCAL IMPACT STATEMENT

- Cost or Savings to Any State Agency: None.
- Other Non-Discretionary Cost or Savings to Local Agencies: None.
- Costs or Savings in Federal Funding to the State: None.
- Cost Impact on Representative Private Persons or Businesses: The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. These regulations apply only to one year limited term driver licenses or identification cards when federal legal presence documentation lacks an expiration date.
- Effects on Housing Costs: None.

#### DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.
- The adoption of this regulation is not expected to create or eliminate jobs or businesses in the state of California or reduce or expand businesses currently doing business in the state of California.
- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- The proposed regulatory action will not affect small businesses. These regulations apply only to driver license or identification card applicants required to provide proof of legal presence prior to issuance.

#### PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code section 11346.45, is not required because the issues addressed in the proposal are not so complex or large in number that they cannot easily be reviewed during the comment period.

#### ALTERNATIVES CONSIDERED

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons that the proposed action.

#### CONTACT PERSON

Inquiries relevant to the proposed action and questions on the substance of the proposed regulations should be directed to the department representative, Randi Calkins, Department of Motor Vehicles, P.O. Box 932382, Mail Station C-244, Sacramento, California, 94232-3820; telephone number (916) 657-8898, or [rcalkins@dmv.ca.gov](mailto:rcalkins@dmv.ca.gov). In the absence of the department representative, inquiries may be directed to Christie Patrick, at (916) 657-5567 or [cpatrick@dmv.ca.gov](mailto:cpatrick@dmv.ca.gov). The fax number for the Regulations Branch is (916) 657-1204.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The department has prepared an initial statement of reasons for the proposed action and has available all the

information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the express terms of the proposed action using underline or italics to indicate additions, and strikeouts to indicate deletions from the California Code of Regulations. The contact person identified in this notice shall also make available to the public, upon request, the final statement of reasons and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (Initial Statement of Reasons and Express Terms) may be accessed at [www.dmv.ca.gov/about/lad/regactions.htm](http://www.dmv.ca.gov/about/lad/regactions.htm).

#### AVAILABILITY OF MODIFIED TEXT

Following the written comment period and the hearing, if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the full, modified text with changes clearly indicated would be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Requests for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

### TITLE 14. BOARD OF FORESTRY AND FIRE PROTECTION (BOARD)

#### Title 14 of the California Code of Regulations

[Notice Published May 8, 2009]

#### NOTICE OF PROPOSED RULEMAKING

##### Watersheds with Threatened or Impaired Values, 2009

The proposed changes to the Forest Practice Rules (FPRs) amend sections related to "Protection and Restoration in Watersheds with Threatened or Impaired Values", 14 CCR § 916.9 [936.9, 956.9], which are generally termed the "Threatened or Impaired watershed" rules (T/I rules). These regulations define planning and

operational requirements for timber harvesting in planning watersheds where state or federally listed threatened, endangered or candidate populations of anadromous salmonids are present or where they can be restored.

#### PROPOSED REGULATORY ACTION

The Board proposes to amend the following sections of Title 14 of the California Code of Regulations (14 CCR):

##### Amend:

§ 895	Abbreviations Applicable Throughout the Chapter.
§ 895.1	Definitions.
§ 898	Feasibility Alternatives.
§ 914.8 [934.8, 954.8]	Tractor Road Watercourse Crossing.
§ 916 [936, 956]	Intent of Watercourse and Lake Protection.
§ 916.2 [936.2, 956.2]	Protection of the Beneficial Uses of Water and Riparian Functions.
§ 916.5 [936.5, 956.5]	Procedure for Determining Watercourse and Lake Protection Zone (WLPZ) Widths and Protective Measures.
§ 916.9 [936.9, 956.9]	Protection and Restoration in Watersheds with Threatened or Impaired Values.
§ 916.11 [936.11, 956.11]	Effectiveness and Implementation Monitoring.
§ 916.12 [936.12, 956.12]	Section 303(d) Listed Watersheds.
§ 923.3 [943.3, 963.3]	Watercourse Crossings.
§ 923.9 [943.9, 963.9]	Roads and Landings in Watersheds with Threatened or Impaired Values.

#### PUBLIC HEARING

**The Board will hold a public hearing starting at 8:00 a.m., on June 24, 2009, at the Resources Building Auditorium, 1<sup>st</sup> Floor, 1416 Ninth Street, Sacramento, California.** At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing



in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

#### WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. **The written comment period ends at 5:00 p.m., on Tuesday, June 22, 2009.** The Board will consider only written comments received at the Board office by that time (in addition to those written comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection  
Attn: Christopher Zimny  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection  
Room 1506-14  
1416 9<sup>th</sup> Street  
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

#### AUTHORITY AND REFERENCE

Public Resources Code (PRC) § 4551 and 4554.5 authorizes the Board to adopt such rules and regulations as it determines are reasonably necessary to enable it to implement, interpret or make specific sections 4512, 4513 and 4561 of the Public Resources Code. Reference: Public Resources Code sections 4513, 4551.5, 4561 and 21080.5.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The “Threatened or Impaired Watershed” (T/I) rules is the common name used to describe the subset of California Forest Practice Rules (FPRs) intended to protect listed anadromous salmonid (salmon) species and their habitat in forest settings. The T/I rules regulate commercial timber harvesting on private land in watersheds where salmon species are designated as threatened or endangered species under the State or Federal Endangered Species Acts (TES). The rules also address timber harvesting and operational requirements for waterbodies listed under the federal Clean Water Act, section 303(d) as “impaired.” The T/I rules were originally adopted in July 2000 and have been in place on an interim basis since that time. The proposal would remove the interim status of the rules and make them permanent.

#### SPECIFIC PURPOSE OF THE REGULATION

The T/I rules are being revised to:

- Ensure their adequacy in protecting the species and the species’ habitat;
- Address public agency species listing and recovery actions
- Ensure that the rules are necessary and not unnecessarily economically burdensome;
- Ensure rules are based on credible and current science;
- Meet statutory requirements under Public Resource Code 4553 for review and periodic revisions to FPRs; and
- Establish permanent T/I rules as existing regulations will expire on December 31, 2009. Without a regulatory action, there would be insufficient forestry rules for the protection of listed anadromous salmonid habitat.
- Substantive changes were made in the proposed T/I rules compared to the existing interim rules. Highlights are shown below.
- Greater specificity in geographic scope by creating regional rules reflecting differences in salmonid habitat settings, the variability of different salmonid species life history needs, and the physiographic differences within California bioregions;
- Recognition of the need to protect unique riparian features such as channel migration zones, flood prone areas, and differentiating small Class II watercourses from large Class II watercourses;
- Class I and Class II watercourse WLPZs widths and silvicultural requirements revised to best reflect current science for protecting riparian function;



- New protective standards for small headwater watercourses (Class II and III watercourses).
- Revised goals and objectives to promote achievement of properly functioning salmonid habitat, contribute to recovery of salmonid species and restoration of salmonid habitats; and protect riparian zones from catastrophic wildfires.
- Development of guidance for site-specific plans that contain flexibility for landowners to meet T/I goals and objectives while providing appropriate disclosure for regulatory evaluation;
- Greater permitting efficiency for landowners and public agencies through incorporation of regulatory language that provides consistency with Fish and Game Code Section 1600 et seq., conformance with Regional Water Board permitting requirements, and consistency with DFG and NMFS species recovery plans and incidental take permit or take avoidance requirements.
- Development of “Best Management Practices” (i.e. BMPs) that will guide expectations for conduct of timber operation to achieve goals of the rules.

The amendments in this proposal contain Optional Amendments. Optional Amendments provide the Board the opportunity to consider alternative measures, their basis, level of protection, level of risk, and feasibility.

Optional Amendments are identifiable in the proposed text when the term “OPTIONAL AMENDMENT” is stated, and the text related to the Optional Amendment is in brackets [text]. Each Optional Amendment is numbered for clarity. If the same Optional Amendment is reused in several subsections of the proposed rules, its number is retained.

Use of the term “Optional Amendment” will not be part of the final adopted regulatory language. Once the Board decides on inclusion or exclusion of the content of the Optional Amendment, the term will be removed. Optional Amendments may be adopted or deleted by the Board, after its duly required notice and public hearing processes, without further public notices or hearings.

#### DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None
- Costs or savings to any State agency: None

- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None
- The Board has made an initial determination that there will be no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Cost impacts on representative private persons or businesses: The Board has made an initial determination of economic impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The net level of significance of these economic impacts is not estimated as the proposal will result in both positive and negative economic impacts.
- Effect on small business: The Board has determined that the proposed amendments will affect small business because the proposal adds new operational or plan preparation costs.
- Significant effect on housing costs: None
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- Effect on small business: The Board has determined that the proposed amendments may have an effect on small business.
- The proposed rules do not conflict with, or duplicate Federal regulations.

#### BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection  
Attn: Christopher Zimny  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460  
Telephone: (916) 653-9418

The designated backup person in the event Mr. Zimny is not available is Doug Wickizer, California Department of Forestry and Fire Protection, at the above address and phone.

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above referenced information is also available on the Board web site at:

[http://www.fire.ca.gov/BOF/board/board\\_proposed\\_rule\\_packages.html](http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html)

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. No-

tice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

## TITLE 14. FISH AND GAME COMMISSION

### Notice of Proposed Changes in Regulations

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 2070 and 2075.5 of the Fish and Game Code and to implement, interpret or make specific sections 1755, 2055, 2062, 2067, 2070, 2072.7, 2075.5, and 2077, of said Code, proposes to amend Section 670.5, Title 14, California Code of Regulations, relating to Animals of California Declared to Be Endangered or Threatened.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

State law (Section 2070, Fish and Game Code) specifies that the Commission shall establish a list of endangered species and a list of threatened species and it shall add or remove species from either list if it finds, upon the receipt of sufficient scientific information, that the action is warranted.

On August 14, 2007, the Commission received a petition to list longfin smelt as threatened or endangered under CESA. Pursuant to the provisions of Section 2074.2 of the Fish and Game Code, the Commission, at its February 7, 2008 meeting, accepted the petition for consideration and made a finding that the petitioned action may be warranted. Pursuant to the provisions of Section 2075.5 of the Fish and Game Code, the Commission, at its March 4, 2009, meeting, made a finding that the petitioned action to list the longfin smelt as threatened is warranted.

The Commission seeks to amend Section 670.5 of Title 14, CCR, to add the longfin smelt to the list of threatened fish (subsection (b)(2)).

In making the recommendation to list the longfin smelt pursuant to the California Endangered Species Act, the Department relied most heavily on the following: (1) longfin smelt is short-lived, (2) introductions of exotic organisms have altered its habitat, distribution, food supply, and possibly abundance, (3) water projects have adversely modified its habitat, distribution, food supply, and probably abundance, and (4) contaminants identified in ambient water samples have periodically adversely affected test organisms and may be affecting longfin smelt abundance. Threats to the longfin smelt population are likely to continue or increase, and several measures of longfin smelt abundance were examined and the Department found that they all indicate that the population has declined substantially.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Yolo Fliers Club Ballroom, 17980 County Road 94B, Woodland, California, on Thursday, June 25, 2009, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before June 19, 2009 at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on June 22, 2009. All comments must be received no later than June 25, 2009 at the hearing in Woodland, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sherrie Fonbuena at the preceding address or phone number. **Ms. Ann Malcolm, General Counsel, Department of Fish and Game, phone (916) 654-3815, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

#### Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed,

they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

#### **Impact of Regulatory Action**

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Although the California Endangered Species Act (CESA) does not specifically prohibit the consideration of economic impacts in determining if listing is warranted, the Attorney General's Office has consistently advised the Commission that it should not consider economic impact in making a finding on listing. This is founded in the concept that CESA was drafted in the image of the federal Endangered Species Act. The federal act specifically prohibits consideration of economic impact during the listing or delisting process.

The CESA listing process essentially involves two stages. During the first stage, the Commission must make a finding on whether or not the petitioned action is warranted. Once the Commission has made a finding that the petitioned action is warranted, it must initiate a rulemaking process to make a corresponding regulatory change. To accomplish this second stage, the Commission follows the requirements of the Administrative Procedure Act (APA).

The APA, specifically Government Code (GC) sections 11346.3 and 11346.5, requires an analysis of the economic impact of the proposed regulatory action. While GC section 11346.3 requires an analysis of economic impact on businesses and private persons, it also provides that agencies shall satisfy economic assessment requirements only to the extent that the requirements do not conflict with other state laws.

Since the finding portion of CESA is silent as to consideration of economic impact, it is possible that subdivision (a) of Section 11346.3 may require an economic impacts analysis. While the Commission does not be-



lieve this is the case, an analysis of the likely economic impact of the proposed regulation change on businesses and private individuals is provided. The intent of this analysis is to provide disclosure, the basic premise of the APA process. The Commission believes that this analysis fully meets the intent and language of both statutory programs.

Designation of the longfin smelt as threatened will entitle it to CESA protection. CESA prohibits take and possession except as may be permitted by the Department. Threatened status is not expected to result in any significant adverse economic effect on small business or significant cost to private persons or entities undertaking activities subject to the California Environmental Quality Act (CEQA). CEQA requires local governments and private applicants undertaking projects subject to CEQA to consider *de facto* threatened species to be subject to the same requirements under CEQA as though they were already listed by the Commission (CEQA Guidelines, section 15380).

Required mitigation under CEQA, whether or not the species is listed by the Commission, may increase the cost of a project. Such costs may include, but are not limited to, purchasing off-site habitat, development and implementation of management plans, installation of protective devices such as fencing, protection of additional habitat, imposing flow restrictions and long-term monitoring of mitigation sites. Lead agencies may also require additional actions should the mitigation measures fail, resulting in added expenditures by the project proponent. If the CEQA mitigation measures do not minimize and fully mitigate to the standards of CESA, listing could increase business costs to the extent of any necessary additional measures.

(b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

(c) Cost impacts on a Representative Private Person or Business:

Designation of threatened or endangered status, per se, would not necessarily result in any significant cost to private persons or entities undertaking activities subject to CEQA. CEQA requires private applicants undertaking projects subject to CEQA to consider *de facto* endangered (or threatened) and rare species to be subject to the same protections under CEQA as though they were already listed under CESA.

Any added costs should be more than offset by savings that would be realized through the information consultation process available to private applicants under CESA. The process would allow conflicts to be resolved at any early stage in project planning and devel-

opment, thereby avoiding conflicts later in the CEQA review process, which would be more costly and difficult to resolve.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

(h) Effect on Housing Costs: None.

#### Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

#### Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## **TITLE 17. CALIFORNIA AIR RESOURCES BOARD**

### **NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF A PROPOSED AB 32 COST OF IMPLEMENTATION FEE REGULATION AND PROPOSED AMENDMENT TO THE EXISTING REGULATION FOR THE MANDATORY REPORTING OF GHG EMISSIONS**

The Air Resources Board (ARB or the Board) will conduct a public hearing at the time and place noted below to consider the adoption of a new regulation to impose fees on sources of GHG emissions to carry out Assembly Bill 32 (AB 32), the California Global Warming Solutions Act of 2006, and to consider the adoption of an amendment to the existing Regulation for the Mandatory Reporting of GHG Emissions.

DATE: June 25–26, 2009

TIME: 9:00 a.m.

PLACE: California Environmental Protection  
Agency  
Air Resources Board  
Byron Sher Auditorium  
1001 I Street  
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m. June 25, 2009 and may continue at 8:30 a.m., June 26, 2009. This item may not be considered until June 26, 2009. Please consult the agenda for the meeting, which will be available at least 10 days before June 25, 2009, to determine the day on which this item will be considered.

If you require special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by fax at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

## INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

### **Sections Affected:**

Proposed adoption of California Code of Regulations, title 17, new article 3, sections 95200, 95201, 95202, 95203, 95204, 95205, 95206, and 95207. Proposed amendment to California Code of Regulations, title 17, article 2, section 95104.

### **Background:**

#### ***AB 32 Cost of Implementation***

Governor Schwarzenegger signed the California Global Warming Solutions Act of 2006 (AB 32) on September 27, 2006. When the Legislature adopted AB 32, it declared that global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. AB 32 directed ARB to establish a statewide greenhouse gas (GHG) emissions limit for 2020 based on 1990 emissions.

AB 32 directs the Board to carry out specific tasks related to reducing GHG emissions. These tasks include monitoring GHG emissions, implementing a program of annual reporting of GHG emissions from GHG emission sources, and accounting for all GHG emissions, including emissions from all electricity generated in California or imported from other states, providing reporting tools for such data, and ensuring the sources of GHG emissions maintain records of GHG emissions.

AB 32 also specifically directed ARB to adopt a Scoping Plan by January 1, 2009, that shows how emission reductions will be achieved from significant GHG

sources via regulations, market mechanisms, and other actions.

ARB's approved Climate Change Scoping Plan identifies the proposed regulation as necessary to carry out AB 32. ARB and other State agencies are developing and implementing regulations and other programs to carry out the Scoping Plan. The Scoping Plan states:

Administration, implementation, and enforcement of the emissions reduction measures contained in the Proposed Scoping Plan will require a stable and continuing source of funding. AB 32 authorizes ARB to collect fees to fund implementation of the statute. This fall ARB will initiate a rulemaking for a fee program to fund administration of the program. (Scoping Plan, page 112.)

AB 32 authorizes ARB, through Health and Safety Code section 38597, to adopt a schedule of fees to be paid by sources of GHG emissions to support the costs of carrying out AB 32. ARB staff is proposing this regulation pursuant to section 38597.

#### ***GHG Mandatory Reporting Tool***

ARB's Regulation for the Mandatory Reporting of GHG Emissions is set forth in California Code of Regulations, title 17, sections 95100-95133, and became effective January 2, 2009. The regulation requires specified sources of GHG emissions to report those emissions to ARB every year beginning in 2009. The reporting of GHG emissions is required by operators of cement plants, petroleum refineries, hydrogen plants, electricity generating facilities, cogeneration facilities, electricity retail providers and marketers, and other industrial facilities emitting 25,000 tonnes or more of carbon dioxide (CO<sub>2</sub>) in a calendar year.

To ensure complete and efficient reporting of required data for mandatory reporting, ARB staff contracted with an environmental consulting firm to develop a web-based reporting tool for the required data submittal. The tool, referred to as "The California GHG Reporting Tool," allows the reporting of emissions and other data in a manner that directly addresses the requirements of the Mandatory Reporting regulation. It also enables public access to verified emissions information. Information entered in the tool reflects only that information required by the Mandatory Reporting Regulation.

The tool facilitates complete reporting by ensuring that collected data are consistent with the requirements of the Mandatory Reporting Regulation and provides reporters with automated quality assurance checks on data entered in the tool. All information collected through the tool is housed in a secure, password-protected database. The tool eases the administrative burden on reporters and the State by eliminating the trans-



fer of hard-copy reports. ARB developed a comprehensive user guide and sector-specific reporting guidance documents to assist reporters in using the tool.

#### DESCRIPTION OF PROPOSED REGULATORY ACTION

##### ***AB 32 Cost of Implementation***

The proposed regulation imposes fees to fund ARB's actions, as well as other State agencies' actions, associated with carrying out AB 32. The fees are based on a "common carbon cost," which represents the cost of one metric ton of carbon dioxide (MTCO<sub>2</sub>) emissions. The proposed regulation specifies that ARB's Executive Officer shall calculate the fees due for each fiscal year, using formulas specified in the regulation, and send the fee determination notice to fee payers no later than 30 days after the end of each calendar year.

The proposed regulation imposes fees on entities in six sectors of the economy: natural gas entities, producers and importers of gasoline and diesel fuel, refineries, cement manufacturers, retail providers and marketers of imported electricity, and facilities that combust coal.

Natural gas entities include public utility gas corporations, owners and operators of interstate and intrastate natural gas pipelines, and entities that consume natural gas or associated gas produced on-site that are also subject to the Mandatory Reporting Regulation.

The proposed regulation does not apply to any of the following fuels, or to emissions related to the combustion of the following fuels: aviation gasoline, jet fuel, kerosene, liquefied petroleum gas, biodiesel, renewable diesel, residual fuel oil, propane, or any fuel exported for use outside of California.

The proposed regulation also specifies reporting and recordkeeping requirements, and requires fee-paying entities to report this information using ARB's "GHG Reporting Tool." The tool has recently been completed and will be modified to accommodate the reporting requirements of the proposed fee regulation as well as the requirements of the Mandatory Reporting Regulation.

##### ***Proposed Amendment to the Mandatory Reporting Regulation***

Staff is proposing to amend California Code of Regulations, title 17, section 95104, to require entities subject to the Regulation for the Mandatory Reporting of GHG Emissions to use ARB's "GHG Reporting Tool" to electronically report the required data. The proposed amendment would apply to all entities that are currently required to report GHG emissions pursuant to the Regulation for the Mandatory Reporting of GHG Emissions.

#### COMPARABLE FEDERAL REGULATIONS

There are no comparable federal regulations that impose fees to implement a GHG emissions reduction law,

or that require the use of a reporting tool for sources of GHG emissions.

#### AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The ISOR is entitled, "Initial Statement of Reasons (ISOR) for the Proposed AB 32 Cost of Implementation Fee Regulation and Proposed Amendment to the Mandatory Reporting Regulation."

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1<sup>st</sup> Floor, Sacramento, California, 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing on June 25, 2009.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons identified below, or may be accessed on ARB's website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mr. Jon Costantino, Manager of the Climate Change Planning Section, at (916) 324-0931, or Ms. Jeannie Blakeslee, Air Pollution Specialist, at (916) 445-8286.

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action may be directed are Ms. Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, or Ms. Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are also available on ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2009/feereg09/feereg09.htm>.

#### COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

The ARB Executive Officer has determined that, except as discussed below, the proposed regulatory action would not create costs or savings, as defined in Government Code section 11346.5(a)(5) and 11346.5(a)(6), to any State agency or in federal funding to the State, costs or mandate to any local agency or school district, whether or not reimbursable by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary costs or savings to State or local agencies.

The proposed regulation would impose costs on some State and local agencies, but not on school districts. One State agency would be affected: the State Department of Water Resources, which directly imports electricity. However, there would be no net fiscal impact on the Department of Water Resources if it is able to use existing administrative mechanisms to pass the fee costs on to its customers.

The Executive Officer has determined that the proposed regulatory action will create costs and impose a mandate on some local agencies. The local agencies impacted would be those that serve as retail providers and marketers of imported electricity. However, the mandate would apply uniformly to all retail providers and marketers of imported electricity, not just local agencies.

Therefore, the Executive Officer has determined that the proposed regulatory action imposes no costs on local agencies or school districts that are required to be reimbursed by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, and does not impose a mandate on local agencies or school districts that is required to be reimbursed pursuant to section 6 of Article XIII B of the California Constitution.

In addition, there will be indirect costs to State and local agencies and school districts, because the regulation imposes costs on businesses that sell products to State agencies, local agencies, and school districts. ARB estimates that businesses selling gasoline and diesel, natural gas, electricity, and cement will recover their compliance costs by raising their product prices by an average of less than one tenth of one percent. Staff estimates an increase of approximately \$0.0015 per gallon of diesel and gasoline, \$0.07 per megawatt-hour of imported electricity from an unspecified source, \$0.0007 per therm of natural gas, and \$0.10 per ton of cement. ARB does not have data on total State and local agency purchases of gasoline and diesel, natural gas, electricity, and cement, so it cannot estimate the total indirect cost to State and local agencies.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. ARB has determined that representative private persons would be af-

ected by the cost impacts from the proposed regulatory action. The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would affect small businesses.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, ARB must determine that no reasonable alternative considered by ARB, or that has otherwise been identified and brought to the attention of ARB, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## SUBMITTAL OF COMMENTS

Interested members of the public may present comments relating to this matter orally or in writing at the meeting, and in writing or by e-mail before the meeting. To be considered by the Board, written comments or submissions not physically submitted at the meeting must be received **no later than noon, Pacific Standard Time, June 24, 2009**, and addressed to the following:

Postal mail: Clerk of the Board  
Air Resources Board  
1001 I Street, 23rd Floor  
Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Facsimile submittal: (916) 322-3928

Please note that under the California Public Records Act (Government Code section 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, e-mail, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engine.

The Board requests, but does not require, that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

#### STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted to ARB in Health and Safety Code sections 38510, 38530, 38597, 39600, 39601, and 41511. This action is proposed to implement, interpret, and make specific Health and Safety Code sections 38501, 38505, 38510, 38530, 38597, 39300, 39600, 39601, 41511, and 41513.

#### HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text, as modified, is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language, as modified, could result from the proposed regulatory action. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California 95814, (916) 322-2990.

## TITLE 17. CALIFORNIA AIR RESOURCES BOARD

### NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF COOL CAR STANDARDS AND TEST PROCEDURES — 2012 AND SUBSEQUENT MODEL-YEAR PASSENGER CARS, LIGHT-DUTY TRUCKS, AND MEDIUM-DUTY VEHICLES.

The Air Resources Board (ARB or the Board) will conduct a public hearing at the time and place noted below to consider adoption of new regulations to reduce greenhouse gas (GHG) emissions from light-duty and medium-duty vehicles. The proposed regulation would set standards for vehicle window glazing. Solar management glazing will reduce the amount of radiant heat that enters the vehicle, allowing the interior temperature to remain cooler, and reducing the load on the engine from the air conditioner. This will enable the use of a smaller, more efficient air conditioner, which results in lower GHG emissions.

This notice summarizes the proposed regulatory action. The staff report presents the proposed regulation and information supporting the adoption of the regulation in greater detail.

DATE: June 25–26, 2009

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency  
Air Resources Board  
Byron Sher Auditorium  
1001 I Street  
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., June 25, 2009, and may continue at 8:30 a.m., June 26, 2009. This item may not be considered until June 26, 2009. Please consult the agenda for the meeting, which will be available at least 10 days before June 25, 2009, to determine the day on which this item will be considered.

If you require special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by fax at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

#### INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

**Sections Affected:** Proposed adoption of California Code of Regulations, title 17, subarticle 9, new sections 95600, 95601, 95602, 95603, 95604, and 95605.



**Background:** In 2006, the Legislature passed and Governor Schwarzenegger signed the California Global Warming Solutions Act of 2006, Assembly Bill 32 (AB 32) (Stats. 2006, ch. 488). In AB 32, the Legislature declared that global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The Legislature further declared that global warming will have detrimental effects on some of California's largest industries, including agriculture and tourism, and will increase the strain on electricity supplies. While national and international actions are necessary to fully address the issue of global warming, the Legislature recognized that action taken by California to reduce emissions of greenhouse gases will have far-reaching effects by encouraging other states, the federal government, and other countries to act.

AB 32 creates a comprehensive, multi-year program to reduce GHG emissions in California, with the overall goal of restoring emissions to 1990 levels by the year 2020. To this end, ARB adopted an AB 32 Scoping Plan on December 12, 2008, which outlines the State's strategy to achieve the 2020 GHG emission reductions.

The "Cool Cars" proposal originally focused on solar reflective paints for automobiles. "Cool Paints for Automobiles" was approved as an Early Action item under AB 32 in June 2007. Glazing was added to the proposal, and the Cool Cars proposal was included in the "Vehicle Efficiency Measure" for light-duty vehicles in the 2008 Scoping Plan. The current Cool Cars proposal includes only the glazing component, and would provide an opportunity for automobile manufacturers to use a less powerful compressor in their air conditioners, as well as reduce the time a driver would activate his/her vehicle's air conditioner. The use of mobile air conditioners increases greenhouse gas pollutant emissions, as well as emissions of criteria pollutants.

**Description of the Proposed Regulatory Action:**

When a vehicle is parked in the sun, the sun's rays transmit energy into the vehicle through the sheet metal and windows, warming it to levels above ambient temperatures. If some of this energy were blocked or reflected back into the environment, the vehicle's interior temperature would remain cooler, and occupants would be less likely to activate the air conditioner. It would also allow manufacturers to use a smaller air conditioner that would result in fewer GHG emissions while still quickly cooling the vehicle.

The proposed regulation takes advantage of the fact that solar radiation is composed of both visible and invisible light. Slightly over half of the energy from solar radiation is invisible. Solar reflective or solar absorbing glazing can block the sun's invisible energy from entering the vehicle, while maintaining good visibility through the windows.

Staff is proposing that newly manufactured passenger vehicles less than or equal to 10,000 pounds gross vehicle weight use solar management glazing. Beginning with model-year 2012, windshields would be required to transmit no more than 50 percent of the total solar energy into the vehicle. This includes visible light, as well as ultraviolet and infrared (heat) energy, and would be accomplished using generally available technology. Rooflites that transmit no more than 30 percent of the total solar energy would also be required. The balance of vehicular glazing would be required to transmit no more than 60 percent of the total solar energy. Most glass manufacturers currently offer this level of solar control. A second tier requirement for the windshield, limiting total solar transmission to no more than 40 percent, would begin with model-year 2014. Two glazing manufacturers have publicly stated that they have, or will have met or exceeded, this level of control by 2014. Staff is further proposing options wherein manufacturers may trade improved performance in one glazing area for reduced performance in another.

The proposed regulation also requires that automotive glass replaced on vehicles that would be subject to these requirements also comply with applicable transmission requirements. Staff is not proposing that solar management glass be required for vehicles not originally sold with it.

Current automobile glazing has various supplier and safety information on it. The proposed regulation has a placeholder for requiring glazing (new and replacement) to have symbols/icons or other identifiers so that glazing replacers, consumers, and enforcement personnel can readily identify complying product. At the hearing, staff plans to propose specific symbols/icons or other identifiers to further that requirement. Staff may also propose additional changes to the Board at the hearing.

In complying with the proposed regulation, vehicle manufacturers are responsible for ensuring the use of properly labeled glass meeting the required standards. Glazing manufacturers are responsible for providing properly labeled glazing that meets indicated standards, and businesses providing glazing replacement are responsible for ensuring that only properly labeled glazing is utilized. All must keep appropriate records.

This proposal would provide GHG emission reductions throughout California. Staff estimates reductions of almost 0.7 million metric tons of carbon dioxide (MMT CO<sub>2</sub>) per year by 2020 and 1.2 MMT CO<sub>2</sub> per year by 2040 due to reductions in vehicular fuel consumption. The proposed requirements are estimated to result in a per vehicle lifetime cost of about \$111, based on anticipated increases in cost for solar management glazing. This cost would be offset over time by fuel savings resulting from reduced mobile air conditioner use,

and the potential for a smaller air conditioner. The overall average fuel saving is estimated at 4.4 gallons per year per vehicle. At \$3.67 per gallon projected fuel cost, this corresponds to a \$16 per year reduction in fuel costs. Thus, the additional cost would have a payback period of around seven years. Criteria pollutants such as oxides of nitrogen and reactive organic gases would also be reduced.

#### COMPARABLE FEDERAL REGULATIONS

There are no federal regulations comparable to the proposed regulation.

#### AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: Cool Car Standards and Test Procedures — 2012 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing on June 25, 2009.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB's website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Dr. Marijke Bekken, Staff Air Pollution Specialist, at (626) 575-6684, or Ms. Sharon Lemieux, Manager, Emission Research Section, at (626) 575-7067.

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action may be directed are Ms. Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, or Ms. Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at [www.arb.ca.gov/regact/2009/coolcars09/coolcars09.htm](http://www.arb.ca.gov/regact/2009/coolcars09/coolcars09.htm)

#### COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any State agency or in federal funding to the State, costs or mandate to any local agency or school district whether or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. Individuals and state and local agencies may face an increase of approximately one half of one percent in the cost of automobiles purchased. This will be offset by the reduction in fuel use attendant with reduced need for air conditioning and resultant lower GHG emissions. Other than the small increase in the cost of a new automobile, ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action may lead to the creation of jobs within the State of California, but would not affect the creation of new businesses or elimination of existing businesses within the State of California. It may result in the expansion of businesses within the State of California. The proposed regulation could result in a possible increase in research positions to develop any improvements needed in solar management capabilities for window glazing. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.



The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would affect small businesses that supply window replacement services. However, the cost to use specified window glazing will be absorbed by the consumer.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

### SUBMITTAL OF COMMENTS

Interested members of the public may present comments orally or in writing at the meeting, and in writing or by email before the meeting. To be considered by the Board, written comment submissions not physically submitted at the meeting must be received **no later than 12:00 noon, June 24, 2009**, and addressed to the following:

Postal mail: Clerk of the Board  
Air Resources Board  
1001 I Street  
Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Facsimile submittal: (916) 322-3928

Please note that under the California Public Records Act (Gov. Code § 6250 et seq.), written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention

of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

### STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in Health and Safety Code sections 38501, 38510, 38560, 38562, 38580, 39600, and 39601. This action is proposed to implement, interpret, and make specific Health and Safety Code sections 38501, 38505, 38510, 38550, 38551, 38560, 38562, 38580, 39003, 39500, 39600, and 39601.

### HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

## TITLE 17. CALIFORNIA AIR RESOURCES BOARD

### NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF A PROPOSED REGULATION TO REDUCE METHANE EMISSIONS FROM MUNICIPAL SOLID WASTE LANDFILLS

The Air Resources Board (ARB or the Board) will conduct a public hearing at the time and place noted below to consider adopting a regulation to reduce emissions of methane, a greenhouse gas (GHG), from municipal solid waste (MSW) landfills.

DATE: June 25-26, 2009

TIME: 9:00 a.m.

PLACE: California Environmental Protection  
Agency  
Air Resources Board  
Byron Sher Auditorium  
1001 I Street  
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., June 25, 2009, and may continue at 8:30 a.m., June 26, 2009. This item may not be considered until June 26, 2009. Please consult the agenda for the meeting, which will be available at least 10 days before June 25, 2009, to determine the day on which this item will be considered.

If you require special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by fax at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

#### INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

**Sections Affected:** Proposed adoption of California Code of Regulations, title 17, subchapter 10, article 4, subarticle 6. Methane Emissions from Municipal Solid Waste Landfills, sections 95460, 95461, 95462, 95463, 95464, 95465, 95466, 95467, 95468, 95469, 95470, 95471, 95472, 95473, 95474, 95475, and 95476.

**Background:** In 2006, the Legislature passed, and Governor Schwarzenegger signed, the California Global Warming Solutions Act of 2006 (Assembly Bill 32; Stats. 2006, chapter 488). In Assembly Bill (AB) 32, the Legislature declared that global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The Legislature further declared that global warming will have detrimental effects on some of California's largest industries, including agriculture and tourism, and will increase the strain on electricity supplies. While national and international actions are necessary to fully address the issue of global warming, the Legislature recognized that action taken by California to reduce GHG emissions will have far-reaching effects by encouraging other states, the federal government, and other countries to act. AB 32 creates a comprehensive, multi-year program to reduce GHG emissions in California, with the overall goal of restoring emissions to 1990 levels by the year 2020. AB 32 requires ARB to take actions that include:

- Establishing a statewide GHG emissions cap for 2020, based on 1990 emissions;

- Adopting a Scoping Plan by January 1, 2009, indicating how emission reductions will be achieved from significant GHG sources via regulations, market mechanisms, and other actions;
- Adopting a list of Discrete Early Action GHG emission reduction measures by June 30, 2007, which can be implemented and enforced no later than January 1, 2010; and
- Adopting regulations by January 1, 2010, to implement the measures identified on the list of Discrete Early Action Measures.

In June 2007, the Board identified a measure to reduce methane emissions from MSW landfills as a discrete early action measure.

Methane is a major contributor to climate change, having a global warming potential of 21 times that of carbon dioxide. It has a relatively short atmospheric lifetime of about ten years. Changes in a methane source's emissions level can affect atmospheric concentrations in a relatively short time scale.

In California, MSW landfills are the second largest anthropogenic source of methane. The organic portion of solid waste disposed in MSW landfills decomposes to form landfill gas; methane typically accounts for about 50 percent of the total landfill gas composition. Approximately 1.2 billion tons of solid waste has accumulated in the State's landfills, with an additional 40 million tons being added each year. In 1990, GHG emissions from MSW landfills were estimated to be about 6.3 million metric tons of carbon dioxide equivalents (MMTCO<sub>2</sub>E). These emissions are forecasted to increase to approximately 7.7 MMTCO<sub>2</sub>E in 2020. Emissions from MSW landfills represent about one percent of the statewide GHG inventory. If not captured, combusted, or treated in control systems, landfill gas can either be released into the atmosphere as fugitive emissions or migrate underground to cause groundwater contamination.

In the 1990s, many local air districts adopted regulations to reduce emissions of volatile organic compounds, an ozone precursor, from landfills. These regulations resulted in landfill gas collection and control systems being installed at most large landfills. About 93 percent of the total statewide waste-in-place (the amount of waste in a landfill) is contained in landfills with gas collection and control systems.

#### **Description of the Proposed Regulatory Action:**

The proposed regulation applies to active, inactive, and closed MSW landfills that received solid waste after January 1, 1977, and have at least 450,000 tons of waste-in-place. Currently uncontrolled landfills that meet these criteria will be required to install gas collection and control systems. All affected landfills will be

required to maintain landfill gas collection and control systems to specified standards. Currently uncontrolled landfills that meet these criteria. Installation and proper operation of these systems will significantly reduce the emissions of methane and other volatile organic compounds produced as organic materials decompose in landfills. The proposed regulation contains performance standards for the gas collection and control system, and specifies monitoring requirements to ensure that the system is being maintained and operated in a manner to minimize methane emissions.

ARB staff estimates that there are 14 uncontrolled landfills with at least 450,000 tons of waste-in-place that may generate sufficient gas to support the installation of a gas collection and control system. Based on ARB staff's 2020 forecast of landfill emissions, if all 14 of those landfills were to install emission controls for methane, there would be a reduction of about 0.4 MMTCO<sub>2</sub>E in 2020. The implementation and enforcement of the monitoring and performance requirements of the proposed regulation for the remaining estimated 298 affected MSW landfills with gas collections systems already installed is expected to result in an additional estimated emission reduction of 1.1 MMTCO<sub>2</sub>E.

### **Surface Emission Standards**

The proposed regulation includes monitoring requirements to ensure that gas collection and control systems are operating optimally and that fugitive emissions are minimized. Staff is proposing an instantaneous surface monitoring standard of 500 parts per million by volume (ppmv) and an integrated surface sampling standard of 25 ppmv to ensure that the gas collection system is adequately controlling emissions. Instantaneous surface monitoring is used to monitor integrity of the landfill surface and to identify point sources where methane may be escaping into the atmosphere (e.g., around cover penetrations, areas of distressed vegetation, cracks, or seeps in the landfill cover system). Integrated surface sampling accumulates and averages the instantaneous surface monitoring readings and provides a more direct means of revealing clusters of emissions that would indicate possible gas collection system problems. Landfill owners and operators are given the opportunity to repair leaks or make the appropriate adjustments to their gas collection and control systems before an exceedance of the standard is considered a violation.

### **Compliance Dates**

The proposed regulation requires uncontrolled landfills with at least 450,000 tons of waste-in-place to submit a Design Plan prepared by a registered professional engineer. The Design Plan must provide for the control of the collected landfill gas through the use of a gas collection and control system and be designed to collect

gas at a sufficient extraction rate to maintain negative pressure at all wellheads (except under specified conditions). Within 18 months after approval of the Design Plan, active landfills must demonstrate installation of an active gas collection and control system. This compliance schedule should provide sufficient time for the operator to obtain the necessary local agency permits and for installation of the system. Closed and inactive landfills must also demonstrate installation of a gas collection and control system but have up to 30 months after approval of the Design Plan to comply. This compliance schedule provides an extra year for closed or inactive landfills to secure the necessary funds to comply.

Beginning January 1, 2011, owners and operators that are required to install a gas collection and control system, or are already operating a gas collection and control system, must monitor the surface of their landfills to ensure compliance with the surface methane emissions standards. This compliance schedule allows landfill owners or operators time to adjust their current practices to the surface standards and monitoring requirements.

### **Recordkeeping and Reporting**

Under the proposed regulation, municipal solid waste landfill owners and operators will be subject to recordkeeping and reporting requirements. These requirements include maintaining records of the landfill's annual waste acceptance rate and current amount of waste-in-place, monitored operating parameters of the gas collection and control system, equipment downtime, and records of all component leak testing and surface emissions monitoring. These records, necessary to monitor methane emissions and track AB 32 performance objectives, must be submitted to ARB.

## **COMPARABLE FEDERAL REGULATIONS**

### **Federal New Source Performance Standards and Emission Guidelines for Municipal Solid Waste Landfills**

MSW landfills are regulated under local air district rules that implement the requirements of the New Source Performance Standards (NSPS) and Emission Guidelines (EG) (40 CFR Part 60 Subparts WWW and Cc) for MSW landfills. The NSPS applies to "new" MSW landfills that commenced construction, modification, or reconstruction on or after May 30, 1991. The EG applies to "existing" MSW landfills that commenced construction, modification, or reconstruction before May 30, 1991, and that have accepted waste at any time since November 8, 1987, or have additional capacity for future waste deposition. The NSPS and EG require the installation of a landfill gas collection and control system when a MSW landfill reaches a design capacity of 2.75 million tons or greater and has a non-



methane organic compound emission rate of 55 tons per year, or greater.

ARB and the local air districts were required to develop and submit a "State Plan" to the United States Environmental Protection Agency (U.S. EPA) for implementing and enforcing the requirements of the EG. Local air districts that elected not to adopt rules to implement the EG were placed under a Federal Plan, which is directly enforced by U.S. EPA. In general, the larger California air districts adopted rules whereas several smaller districts are subject to the Federal Plan. U.S. EPA promulgated the NSPS and EG on March 12, 1996.

#### **National Emission Standards for Hazardous Air Pollutants — Municipal Solid Waste Landfills**

U.S. EPA promulgated the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for MSW landfills (40 CFR Part 63 Subpart AAAA) on January 16, 2003. The NESHAP has the same requirements as the NSPS, but also contains provisions for start-up, shut-down, and additional recordkeeping and reporting requirements. The proposed regulation differs from federal NSPS and NESHAP requirements in that it applies to smaller landfills (450,000 versus 2,750,000 tons of waste-in-place) and has more stringent requirements for methane collection and control, component leak testing and surface emissions monitoring, and compliance schedules. The more stringent requirements in the proposed regulation are needed to maximize GHG emission reductions. Since the requirements of the proposed regulation are more stringent, they do not conflict with or impede compliance with the existing federal requirements.

#### **AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS**

ARB staff has prepared a staff report for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: Staff Report: Initial Statement of Reasons (ISOR) for the Proposed Regulation to Reduce Methane Emissions from Municipal Solid Waste Landfills, April 2009.

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing on June 25, 2009.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested

from the agency contact persons in this notice, or may be accessed on ARB's website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mr. Richard Boyd, Manager, Process Evaluation Section, at (916) 322-8285, or Mr. Renaldo Crooks, Air Pollution Specialist, at (916) 327-5618.

Further, the agency representative and designated back-up contact persons, to whom nonsubstantive inquiries concerning the proposed administrative action may be directed, are Ms. Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, or Ms. Trini Balcazar, Regulations Coordinator, (916) 445-9564. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at [www.arb.ca.gov/regact/2009/landfills09/landfills09.htm](http://www.arb.ca.gov/regact/2009/landfills09/landfills09.htm).

#### **COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED**

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulation are presented below.

Pursuant to Government Code section 11346.5(a)(5), the Executive Officer has determined that the proposed regulation would possibly impose a mandate on local agencies or school districts, which is not reimbursable under the Government Code because the proposed regulation applies to all entities that own or operate landfills and does not impose unique requirements. The Executive Officer has further determined pursuant to Government Code section 11346.5(a)(6) that the proposed regulation would result in some additional costs to ARB and other State agencies. In addition, the Executive Officer has also determined pursuant to Government Code Section 11346.5(a)(6) that the proposed regulatory action would possibly create a cost to any local agency or school district that is not required to be reimbursed under part 7 (commencing with section 17500) of division 4 of the Government Code, or may impose other nondiscretionary costs or savings on local agencies. The Executive Officer further determined that the proposed regulation would not result in costs or savings in federal funding to the State.

The proposed regulatory action may create costs to local air pollution control and air quality management districts (Districts). However, these costs are recover-



able by fees that are within the Districts' authority to assess (see Health and Safety Code section 42311) and are also specifically provided for in the proposed regulation.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts that representative private persons or businesses might incur in reasonable compliance with the proposed regulation. The Executive Officer has initially assessed that there will be a potential cost impact on private persons or businesses directly affected as a result of the proposed regulatory action.

The cost to affected public agencies and to affected persons and businesses would be approximately \$27 million dollars in initial capital costs with about \$6 million to \$14 million dollars in annual recurring costs (in 2008 dollars). Over the 23-year life of the regulation, this corresponds to a total cost of approximately \$340 million dollars. The cost-effectiveness is estimated to be approximately \$9 per metric ton of carbon dioxide equivalent reduced. Affected persons and businesses may also incur an additional cost for any fees Districts assess.

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code sections 11346.3 and 11346.5(a)(10), the Executive Officer has determined that the proposed regulatory action may lead to creation of some businesses. Due to the longer compliance lead-time for closed landfills, as well as the opportunity to delay control system installation through improved landfill surface maintenance, and multiple available funding mechanisms, ARB staff believes that landfill owners and operators will be able to meet the compliance costs. Businesses that may be created or expanded include those that design, furnish, install, monitor, and maintain landfill gas collection and control systems, as well as those that provide alternative compliance strategies (including waste-to-energy technologies). Existing businesses that provide the aforementioned scope of services and products are likely to see an increase in business due to the requirements of the proposed regulation. Additionally, the proposed regulation may lead to the creation or expansion of jobs in those sectors assisting facilities with compliance. The proposed regulation is not expected to result in the elimination of any jobs or businesses.

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would not have an effect on small businesses. The businesses affected by the pro-

posed regulation do not meet the definition of small business in Government Code section 11342.610.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

A detailed assessment of the economic impacts of the proposed regulation can be found in the ISOR.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by email before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon (Pacific Standard Time), June 24, 2009**, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board  
Air Resources Board  
1001 I Street  
Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Facsimile submittal: (916) 322-3928

Please note that under the California Public Records Act (Gov. Code § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and other search engines.

The Board requests, but does not require, that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff, in advance of the hearing, any suggestions for modification of the proposed regulatory action.

## STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted to ARB under Health and Safety Code sections 38501, 38510, 38560, 38560.5, 38580, 39600, and 39601. This action is proposed to implement, interpret, or make specific Health and Safety Code sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 38561, 38563, 38580, 39003, 39500, 39600, 39601, and 41511.

## HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

## GENERAL PUBLIC INTEREST

## DEPARTMENT OF FISH AND GAME

### Department of Fish and Game — Public Interest Notice

For Publication May 8, 2009  
CESA CONSISTENCY DETERMINATION FOR  
Mesa Repowering-Turbine Replacement Project  
Riverside County  
2080-2009-003-06

The Department of Fish and Game (Department) received notice on April 27, 2009, that the Mesa Wind Power Corp., a subsidiary of Western Wind Energy

U.S. Corp. (Mesa Wind Power), proposes to rely on consultation between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (CESA). This project consists of the disassembly and removal of much of the current facilities on the project site, the upgrade of the original substation, and the repowering and increase of the permitted capacity from 30 megawatt (MW) to 50 MW by the installation of up to 30 General Electric 1.5 MW Super Large Extreme Wind Turbines (SLE Turbines) in Riverside County (Project). The project may cause 34.4 acres of permanent impacts and 7.8 acres of temporary impacts to the desert tortoise (*Gopherus agassizii*).

The U.S. Fish and Wildlife Service (Service), on April 9, 2009, issued a "no jeopardy" federal biological opinion (BO)(FWS-ERIV-08B0455-08F0501) and incidental take statement (ITS) to the Bureau of Land Management (Bureau), which considers the state threatened and federally threatened desert tortoise and authorizes incidental take.

Pursuant to California Fish and Game Code Section 2080.1, Mesa Wind Power is requesting a determination that the BO is consistent with CESA. If the Department determines that the BO is consistent with CESA, Mesa Wind Power will not be required to obtain an incidental take permit under CESA (Fish and Game Code Section 2081(b)) for the proposed project.

## DEPARTMENT OF FISH AND GAME

### Department of Fish and Game — Public Interest Notice For Publication May 8, 2009

### PROPOSED RECOVERY ACTIONS FOR A FULLY PROTECTED SPECIES

Recovery actions for California least tern (*Sterna  
albifrons browni*) on California Department of  
Parks and Recreation land in various locations in  
southern California

The Department of Fish and Game (Department) has received a proposal from the California Department of Parks and Recreation (Parks) to carry out survey activities, including entering colonies, approaching nests, and banding of chicks/fledglings at Border Field State Park, Cardiff State Beach, and Silver Strand State Beach, to monitor breeding populations at these sites. It is anticipated that the proposed activity will commence spring 2009 with surveys being conducted weekly. Monitoring will continue through 2015 depending on funding. California least tern surveys and banding may occur on additional Parks land, throughout southern California, with permission from the Department.

Although the California least tern population has increased significantly over the past 20 years, fledgling production has lagged since 2001. Pair numbers reached a plateau in 2005 and 2006, and then decreased in 2007. It appears that aging and mortality of the majority of the breeding population have surpassed or may surpass productivity and replacement by younger breeders, resulting in a rapidly accelerating decline in breeding pairs and a population crash.

The California least tern is a Fully Protected species, and a State and federally-listed endangered species. Anyone capturing or handling the species is required to have a Scientific Collecting Permit (SCP), a Federal Endangered Species Permit, and additional written authorization from the Department for research on Fully Protected species.

Pursuant to California Fish and Game Code (FGC) Section 3511, the Department may authorize take of Fully Protected birds after 30 days notice has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 3511 for take of Fully Protected birds, it would issue the authorization on or after June 8, 2009, for a term of two to three years, which may be extended by the Department. Contact: Wildlife Branch, 1812 Ninth Street, Sacramento, CA 95811, Attn.: Lyann Comrack.

## OAL REGULATORY DETERMINATIONS

### OFFICE OF ADMINISTRATIVE LAW

#### DETERMINATION OF ALLEGED UNDERGROUND REGULATION

**(Pursuant to Government Code Section 11340.5  
and Title 1, section 270, of the  
California Code of Regulations)**

### BOARD OF PAROLE HEARINGS

#### STATE OF CALIFORNIA OFFICE OF ADMINISTRATIVE LAW

**2009 OAL DETERMINATION NO. 9  
(OAL FILE #CTU 2008-1016-05)**

**REQUESTED BY:** Donald A. Miller

**CONCERNING:** Rule Issued by the Board of Parole Hearings Prohibiting Inmates From Presenting Oral Witness Testimony at Parole Suitability Hearings

Determination Issued Pursuant to  
Government Code Section  
11340.5.

### SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule meets the definition of “regulation” as defined in Government Code section 11342.600<sup>1</sup> and is subject to the Administrative Procedure Act (APA). If a rule meets the definition of a “regulation,” but was not adopted pursuant to the APA and should have been, it is an “underground regulation” as defined in California Code of Regulations, title 1, section 250.<sup>2</sup> OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

### CHALLENGED RULE

On October 16, 2008, Donald Miller (Petitioner) submitted a petition to OAL challenging a rule issued by the Board of Parole Hearings (Board) prohibiting inmates serving an indeterminate sentence from presenting oral witness testimony at parole suitability hearings. The rule was articulated in two separate letters, attached hereto as Exhibit A:

<sup>1</sup> Government Code section 11342.600 states:

“Regulation” means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

<sup>2</sup> California Code of Regulations, title 1, section 250, subdivision (a) defines “underground regulation:”

“Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

- The first letter dated April 23, 2008, is in response to an inmate requesting that the Board permit witnesses to testify on his behalf at his parole suitability hearing. Shannon Stokes, Staff Counsel of the Board, stated: "Prisoners are not permitted to present witnesses at their parole suitability hearing."
- The second letter, dated June 10, 2008, is in response to a request from a family member of an inmate to appear as a witness on behalf of the inmate. S. LaBare, Staff Services Manager I at the Board, stated: "Relatives of the inmate are not eligible to observe or participate in parole hearings."

The Petitioner alleges that the rule meets the definition of "regulation" that should have been adopted pursuant to the APA.

### DETERMINATION

OAL determines that the rule prohibiting inmates from presenting oral witness testimony at parole suitability hearings meets the definition of "regulation" that should have been adopted pursuant to the APA.

### FACTUAL BACKGROUND

On April 23, 2008, and June 10, 2008, staff of the Board sent letters stating that inmates may not present oral witness testimony on their own behalf at parole suitability hearings.

On October 16, 2008, Petitioner submitted a petition to OAL challenging the prohibition expressed in the letters as an underground regulation. On December 9, 2008, OAL accepted the petition for consideration. The acceptance was published in the California Regulatory Notice Register on December 26, 2008.

OAL received no comments from the public.

On February 9, 2009, the Board submitted a response to the petition. The Board argues that the prohibition expressed in the letters is not an underground regulation. The response states that an inmate's rights are provided for in Penal Code section 3041.5 and in California Code of Regulations, title 15, sections 2245 through 2256. The Board points out that these sections do not include the right of the inmate to present oral witness testimony at parole suitability hearings.

On February 18, 2009, the Petitioner submitted a rebuttal to the Board's response. The Petitioner argues that the testimony provided by the friends and family of the inmate would be crucial evidence of the inmate's suitability for parole. The Petitioner further argues that the Board's response is based solely upon the rights listed in the regulations adopted by the Board and that

the rights established in these regulations are not exclusive lists of inmate rights at parole suitability hearings.

### UNDERGROUND REGULATIONS

Government Code Section 11340.5, subdivision (a), prohibits state agencies from issuing rules unless the rules comply with the APA:

(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of section 11340.5 it creates an underground regulation as defined in California Code of Regulations, title 1, section 250.

OAL may issue a determination as to whether or not an agency issued, utilized, enforced, or attempted to enforce a rule that meets the definition of "regulation" as defined in Government Code section 11342.600 that should have been adopted pursuant to the APA. An OAL determination that an agency has issued, utilized, enforced, or attempted to enforce an underground regulation is not enforceable against the agency through any formal administrative means, but it is entitled to "due deference" in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 268 Cal.Rptr. 244.

To determine whether an agency issued, utilized, enforced, or attempted to enforce an underground regulation in violation of Government Code section 11340.5, it must be demonstrated that the agency rule is, a "regulation" and not exempt from the APA.

### ANALYSIS

A determination of whether the challenged rule is a "regulation" subject to the APA depends on (1) whether the challenged rule is a "regulation" within the meaning of Government Code section 11342.600, and (2) whether the challenged rule falls within any recognized exemption from APA requirements.

A regulation is defined in Government Code section 11342.600 as:

. . . every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.



In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4<sup>th</sup> 557, 571, the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure (Gov. Code, § 11342, subd. (g)).

The first element of a regulation is whether the rule applies generally. As *Tidewater* points out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations. By their own terms, the letters expressing the challenged rule apply to all inmates who are before the Board for a parole suitability hearing. The rule also can affect family members and other persons who wish to appear as witnesses on behalf of the inmate. These inmates and other persons are a clearly defined class of persons. The first element is, therefore, met.

The second element established in *Tidewater* is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency's procedure. Penal Code section 3052<sup>3</sup> states:

The Board of [Parole Hearings] shall have the power to establish and enforce rules and regulations under which prisoners committed to state prisons may be allowed to go upon parole outside the prison buildings and enclosures when eligible for parole.

Penal Code section 3052 establishes the Board's responsibility to establish the procedures for all parole proceedings, including parole suitability hearings. By exercising its discretion and establishing a prohibition against inmates presenting oral witness testimony at parole suitability hearings, the Board makes specific Penal Code section 3052, the law enforced or administered by the Board.

The second element in *Tidewater* is, therefore, met.

Having met both elements of *Tidewater*, OAL determines that the rule prohibiting inmates from presenting

oral witness testimony at parole suitability hearings meets the definition of "regulation" in Government Code section 11342.600.

The final issue to examine is whether the prohibition against an inmate presenting oral witness testimony at a parole suitability hearing falls within an exemption from the APA. Government Code section 11346 requires that an exemption from the APA must be an express statutory exemption. The Board has not identified, nor has OAL found such an express statutory exemption.

OAL, therefore, determines that the rule prohibiting inmates from presenting oral witness testimony at parole suitability hearings meets the definition of "regulation" in Government Code section 11342.600 that should have been adopted pursuant to the APA.

## AGENCY RESPONSE

In its response, the Board states that prisoner parole hearing rights are set forth in Penal Code section 3041.5 and California Code of Regulations, title 15, sections 2245 through 2256. These enumerated rights do not include the right to present oral witness testimony at the parole suitability hearings. The inmate may present documentary evidence and support letters, but not oral witness testimony. Only the inmate, his or her attorney, and the victim or the victim's next of kin may present verbal testimony.

The Board states that no court has held that inmates have the right to present witnesses. We note that the Board has not conversely presented a court decision finding that an inmate does not have the right to present oral witness testimony. OAL finds the law, statutory and regulatory, to be silent on this issue. The Board notes that the regulatory scheme adopted by the Board does provide for the inmate's right to present oral witness testimony at rescission hearings<sup>4</sup> and revocation hearings.<sup>5</sup>

The fact that the law is silent on the issue of whether an inmate may present oral witness testimony at parole suitability hearings is not dispositive of the issue. As noted above, a regulation is defined in Government Code section 11342.600:

"Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to *implement, interpret, or make specific the law enforced or administered by it*, or to govern its procedure. (Emphasis added.)

<sup>3</sup> In 2005, the Department of Corrections was reorganized into the Department of Corrections and Rehabilitation. As part of that reorganization, Government Code section 12838 abolished the Board of Prison Terms and vested "all powers, duties, responsibilities, obligations, liabilities, and jurisdiction" of the Board of Prison Terms in the Board of Parole Hearings.

<sup>4</sup> California Code of Regulations, title 15, section 2465.

<sup>5</sup> California Code of Regulations, title 15, section 2643.

As noted in the Board's response, Penal Code section 3041.5 establishes several rights for inmates at parole suitability hearings. For example:

- The prisoner shall be permitted to review his or her file which will be examined by the Board and shall have the opportunity to enter a written response to any material contained in the file.
- The prisoner shall be permitted to be present, to ask and answer questions, and to speak on his or her own behalf.
- Unless legal counsel is required by some other provision of law, a person designated by the Department of Corrections and Rehabilitation shall be present to ensure that all facts relevant to the decision be presented, including, if necessary, contradictory assertions as to matters of fact that have not been resolved by departmental or other procedures.
- The prisoner shall be permitted to request and receive a stenographic record of all proceedings.

Additionally, the Board has adopted regulations in Title 15 of the California Code of Regulations establishing additional rights for parole suitability hearings which are not included in Penal Code section 3041.5:

- Section 2246 requires an inmate to be notified as soon as possible of the week during which the hearing shall be held, but the inmate shall be notified no later than one month before the week during which the hearing will be held.
- Section 2249 requires that documents presented to the hearing panel by the inmate should be brief, pertinent, and clearly written. They may cover any relevant matters such as mitigating circumstances, disputed facts or release planning. A copy of the documents may be placed in the prisoner's central file.
- Section 2250 entitles an inmate to a hearing by an impartial panel. This section also establishes the grounds and procedure for the disqualification of a hearing panel member.
- Section 2251 entitles the inmate to reasonable assistance in preparing for the hearing, including assistance for language difficulties or physical or mental defects.
- Section 2251.6 establishes the process for submitting a grievance pursuant to the American Disabilities Act, including the contents of the grievance, the requirement that the grievance be brief, pertinent, legible and clearly written, and a limitation on the number of pages that may be submitted and the size of the paper.

- Section 2253 establishes the right of the inmate to voluntarily waive his or her parole consideration hearing for any reason, limits the amount of time for which the hearing is waived based upon the offense of the inmate and requires that the request for a waiver be submitted no later than 45 calendar days before the scheduled date of the hearing.
- Section 2255 requires that every inmate and his or her attorney, if applicable, receive a copy of the decision of the hearing panel specifying the decision, the information considered and the reasons for the decision.

The rights granted in California Code of Regulations, title 15, sections 2245 through 2256 are additional rights established by the Board and do not appear in Penal Code section 3041.5. The Penal Code is silent on what must be in the decision of the hearing panel or the process for disqualifying a member of the hearing panel, or when an inmate must be informed of the week of his or her parole hearing, or any of the other rights established in these sections. These rights established by the Board by regulation implement, interpret or make specific Penal Code section 3052 which gives to the Board the "power to establish and enforce rules and regulations under which prisoners committed to state prisons may be allowed to go upon parole outside the prison buildings and enclosures when eligible for parole."

Similarly, the Penal Code and the California Code of Regulations are silent on the issue of whether an inmate may present oral witness testimony at a parole suitability hearing. When the Board exercised its discretion and established a rule prohibiting such witnesses in all parole suitability hearings, it implemented, interpreted and made specific the authority granted in Penal Code section 3052.

#### PETITIONER'S REBUTTAL

On February 18, 2009, the Petitioner submitted a rebuttal to the Board's response. The Petitioner argued that the testimony provided by the friends and family of the inmate would be crucial evidence of the inmate's suitability for parole. OAL's review is limited to the sole issue of whether the challenged rule meets the definition of "regulation" in Government Code section 11342.600. We do not have the authority to evaluate the underlying policy issues involved in the subject of this determination.

The Petitioner also argued that the Board's response is based solely upon the rights listed in the regulations adopted by the Board and that the rights established in these regulations are not exclusive lists of inmate rights. This issue was addressed above in this determination.

**CONCLUSION**

OAL finds that the challenged rule prohibiting inmates from presenting oral witness testimony at parole suitability hearings meets the definition of a "regulation" in Government Code section 11342.600, does not fall within any express statutory APA exemption and therefore, it should have been adopted as a regulation pursuant to the APA.

Date: April 27, 2009 /s/  
Susan Lapsley  
Director

Office of Administrative Law /s/  
300 Capitol Mall, Suite 1250 Kathleen Eddy  
Sacramento, CA 95814 Senior Counsel

**Exhibit A**

June 10, 2008

LaVonja Margala  
1692 Carmel Circle West  
Upland, CA 91784

RE: Steven Bell  
J-69411

Dear Ms. Margala:

This is in response to your letter of May 29, 2008, requesting permission to witness and speak at the parole suitability hearing of your son, Steven Bell. You wish to testify as to his personal growth and rehabilitation, insights and remorse.

Relatives of the inmate are not eligible to observe or participate in parole hearings. However, you may write your comments in a support letter for Mr. Bell and send it to the institution where he is currently housed, attention "Records Office." All support letters will be placed in Mr. Bell's central file. The Board considers all support letters and material contained within the central file at the parole suitability hearings.

If you have any other questions or concerns, please contact the Board at the address above.

Sincerely,

/s/  
S. LABARE  
Staff Services Manager I

jls

cc: Avenel State Prison, Records Office

April 23, 2008

Mr. Robert Steve Wells  
B-93160  
Correctional Training Facility  
P.O. Box 689  
Soledad, CA 93960-0689

Dear Mr. Wells:

This letter is in response to your correspondence dated, March 27, 2008. In your letter you request that the Board of Parole Hearings ("Board") allow a witness to testify on your behalf at your upcoming parole suitability hearing.

A prisoner's hearing rights are set forth in Penal Code § 3041.5 and in Title 15 of the California Code of Regulations (15 CCR §§ 2245-2256). Prisoners are not permitted to present witnesses at their parole suitability hearing.

Accordingly, the Board denies your request.

Sincerely,

/s/  
Shannon Stokes  
Staff Counsel

**OFFICE OF ADMINISTRATIVE LAW**

**DETERMINATION OF ALLEGED  
UNDERGROUND REGULATIONS  
(Summary Disposition)**

**(Pursuant to Government Code Section 11340.5  
and Title 1, section 270, of the  
California Code of Regulations)**

**DEPARTMENT OF CORRECTIONS AND  
REHABILITATION**

Date: April 27, 2009  
To: Arthur Weeks  
From: Chapter Two Compliance Unit  
Subject: **2009 OAL DETERMINATION NO. 8(S)**  
**(CTU2009-0113-01)**  
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation a memorandum establishing a new Friday visiting program.

On January 13, 2009, you submitted a petition to the Office of Administrative Law (OAL) asking for a deter-

mination as to whether a memorandum establishing a new program permitting visiting on Fridays constitutes an underground regulation. The alleged rule is contained in a memorandum dated June 23, 2006, titled "Addition of Friday Visiting for General Population Disciplinary Free Inmates" (Memorandum). The Memorandum establishes a third day visiting program on Fridays for inmates in the general population who have remained disciplinary free for 90 days. This Memorandum was issued by the warden at California State Prison, Corcoran, and is attached hereto as Exhibit A.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a "regulation" as defined in Government Code section 11342.600,<sup>1</sup> which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).<sup>2</sup> Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

The Memorandum establishes:

1. A third visiting day on Fridays; and
2. Limits access to the Friday visiting day to inmates who are disciplinary free for 90 days.

We will address each element separately.

### Third Day Visiting on Friday

The establishment of the third visiting day on Friday is in compliance with California Code of Regulations, title 15, section 3172.5 (b) which requires:

(b) Each institution head shall develop an operational supplement that includes the respective visiting schedules as follows:

(1) Regular Visiting Days: Four days (Thursday through Sunday); or *Three days (Friday through Sunday)*; or Two days (Saturday and Sunday);

<sup>1</sup> "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

<sup>2</sup> Such a rule is called an "underground regulation" as defined in California Code of Regulations, title 1, section 250, subsection (a):

"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

. . . .

(Emphasis added.)

As noted above, the definition of "regulation" in Government Code section 11342.600 includes "every rule, regulation, order, or standard of general application . . . adopted by any state agency to *implement, interpret, or make specific* the law enforced or administered by it, or to govern its procedure." (Emphasis added.)

California Code of Regulations, title 15, section 3172.5 (b) requires that a regular visiting schedule of three days must permit visiting on Friday through Sunday. The third day visiting program established by California State Prison, Corcoran, complies with section 3172.5 without further implementing, interpreting or making specific section 3172.5. The third day visiting program, therefore, does not meet the definition of "regulation" in Government Code section 11342.600.

### Discipline Free for 90 Days

Generally, a rule which meets the definition of "regulation" in Government Code section 11342.600 is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058, subdivision (c), establishes exemptions expressly for the California Department of Corrections and Rehabilitation (CDCR):

(c) The following are deemed not to be "regulations" as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility. . . .

This exemption is called the "local rule" exemption. It applies only when a rule is established for a single correctional institution.

In *In re Garcia* (67 Cal.App.4<sup>th</sup> 841, 845), the court discussed the nature of a "local rule" adopted by the warden for the Richard J. Donovan Correctional Facility (Donovan) which dealt with correspondence between inmates at Donovan:

The Donovan inter-institutional correspondence policy applies solely to correspondence entering or leaving Donovan. It applies to Donovan inmates in all instances.

. . . .

The Donovan policy is not a rule of general application. It applies solely to Donovan and, under Penal Code section 5058, subdivision (c)(1), is not subject to APA requirements.

Similarly, the limitation of the third day visiting program to inmates who have been discipline free for 90



days applies solely to the inmates of the California State Prison, Corcoran. The Memorandum was issued by Derral G. Adams, the warden of California State Prison, Corcoran. Inmates housed at other institutions are controlled by those other institutions' discipline criteria for similar visiting programs. The rule you challenged was issued by California State Prison, Corcoran, and applies only to inmates at the California State Prison, Corcoran.

### Conclusion

Therefore, establishment of the third visiting day on Friday complies with California Code of Regulations, title 15, section 3172.2 and does not meet the definition of "regulation" in Government Code section 11342.600. The limitation of the third day visiting program to inmates who have been discipline free for 90 days is a "local rule" and is exempt from compliance with the APA pursuant to Penal Code section 5058(c)(1).<sup>3</sup>

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/  
SUSAN LAPSLEY  
Director

/s/  
Kathleen Eddy  
Senior Counsel

<sup>3</sup> The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

- (A) The challenged rule has been superseded.
- (B) The challenged rule is contained in a California statute.
- (C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.
- (D) The challenged rule has expired by its own terms.

**(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule.** (Emphasis added.)

Copy: Matthew Cate  
John McClure

### Exhibit A

#### Memorandum

Date: June 23, 2006

To: All Staff

Subject: **ADDITION OF FRIDAY VISITING FOR GENERAL POPULATION DISCIPLINARY FREE INMATES**

Effective Friday July 7, 2006, California State Prison—Corcoran will begin a Friday General Population visiting program for inmates who have remained disciplinary free for a period of 90 days. This program will be available only to Level I, Facilities 3A, 36, 3C and Protective Housing Unit (PHU) inmates. Security Housing Unit and Administrative Segregation inmates are excluded based on their current housing assignment.

Friday visiting will be from 1200 to 2000 hours. PHU inmates must schedule their visit no later than 1300 hours the day prior. In order to establish an ineligibility list, each Facility, excluding 4B, will be required to forward a photo copy of their disciplinary logs for the months of April, May and June to the Visiting Lieutenant on July 1, 2006.

The Visiting Lieutenant will create an ineligibility list based on this information. All disciplinary reports heard after July 1, 2006, wherein the inmate was found guilty of either an administrative or serious offense, must be shared with visiting staff. When there is a finding of guilt, the hearing officer is responsible for ensuring that a CDC-128B documenting that finding is forwarded immediately to the Visiting Lieutenant. The CDC-128B should read similar to the following;

*Inmate \_\_\_\_\_ CDCR # \_\_\_\_\_ was found guilty of a serious/administrative offense on \_\_/\_\_/\_\_. As such he is no longer eligible for the institution's Friday visiting program for the next 90 days (commencing from the hearing date).*

\_\_\_\_\_  
Hearing Officer Signature Date

All CDC-128B hearing result chrono's shall be delivered on Mondays to the Visiting Lieutenant's office for processing. It is imperative that this new visiting program be shared with the inmate population immediately. It is anticipated that flyers/posters will be generated within a few days for posting in your respective units.

If you have any questions or concerns, please contact R. Davis, Custody Captain at extension 5545.

*Original signed by James D. Hartley*

DERRAL G. ADAMS

Warden

California State Prison—Corcoran

## DEPARTMENT OF JUSTICE

Date: April 27, 2009

To: Gene Hoffman

From: Chapter Two Compliance Unit

Subject: **2009 OAL DETERMINATION NO. 10 (S)**  
**(CTU2009-0227-01)**

(Summary Disposition issued pursuant to  
Gov. Code, sec. 11340.5;  
Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation a letter from the Department of Justice regarding a rifle's "capacity to accept" a detachable magazine.

On February 27, 2009, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether a letter from the Department of Justice (DOJ) regarding a rifle's "capacity to accept" a detachable magazine constitutes an underground regulation.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a "regulation" as defined in Government Code section 11342.600, which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).<sup>1</sup> Nothing in this analysis evaluates the advisability or the wisdom of the underlying motion or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

A rule which meets the definition of "regulation" in Government Code section 11342.600 is required to be adopted pursuant to the APA. The letter you challenge was in reply to a firearms dealer regarding a device designed to temporarily attach a magazine to a rifle, but allow the magazine to be removed from the rifle with the use of a tool. The letter states that there is no question

<sup>1</sup> Such a rule is called an "underground regulation" as defined in California Code of Regulations, title 1, section 250, subsection (a):

"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

that such a configuration would render the magazine of a rifle to be non-detachable. It further states that "it is unclear whether such a configuration negates the rifle's capacity to accept" a detachable magazine.

Penal Code section 12276.1 lists firearms with specified characteristics that are considered to be assault weapons. Subdivision (a)(1) lists one such firearm to be "[a] semiautomatic centerfire rifle that has the capacity to accept a detachable magazine" and also has any one of a list of other characteristics. Pursuant to this subdivision, whether a semiautomatic centerfire rifle is an assault weapon is determined, among other characteristics, by whether that rifle has the "capacity to accept a detachable magazine." This subdivision does not indicate whether the attachment of a non-detachable magazine negates this "capacity to accept a detachable magazine."

The letter you challenge merely restates the law and specifically avoids going beyond the requirements of the statute or attempting to interpret it by specifying another rule. The letter does not further supplement or interpret the existing law regarding "the capacity to accept a detachable magazine" in Penal Code section 12276.1. This letter does not meet the definition of "regulation" in Government Code section 11342.600 and, therefore, does not need to be adopted pursuant to the APA.

For the reasons discussed above, we find that the rule challenged by your petition is not an underground regulation.<sup>2</sup>

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/

SUSAN LAPSLEY

<sup>2</sup> The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

(A) The challenged rule has been superseded.

(B) The challenged rule is contained in a California statute.

(C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.

(D) The challenged rule has expired by its own terms.

(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule.

Director  
/s/  
George C. Shaw  
Staff Counsel

DECISION

Copy: Jerry Brown

**DISAPPROVAL DECISION**

**PHYSICAL THERAPY BOARD**

**STATE OF CALIFORNIA  
OFFICE OF ADMINISTRATIVE LAW**

In re:

PHYSICAL THERAPY BOARD

Title 16, California Code of Regulations

AMEND SECTION 1399.15

**DECISION OF DISAPPROVAL  
OF REGULATORY ACTION**

(Gov. Code, sec. 11349.3)  
OAL File No. 2009-0309-03 S

**SUMMARY OF REGULATORY ACTION**

The Physical Therapy Board ("Board") proposed to amend section 1399.15 of title 16 of the California Code of Regulations and the Model Guidelines for Issuing Citations and Imposing Discipline ("Guidelines") which are incorporated by reference therein.<sup>1</sup> The Guidelines are used by Administrative Law Judges, Deputy Attorneys General, Board members and staff in reviewing the conduct of physical therapists and physical therapy assistants for the possible imposition of discipline and citations. The amendments would also make changes to the Probation Conditions in the Guidelines. The Board submitted the proposed regulatory action to the Office of Administrative Law ("OAL") on March 9, 2009.

<sup>1</sup> Pursuant to section 20 of title 1 of the California Code of Regulations ("CCR"), material proposed for "incorporation by reference" shall be reviewed in accordance with the procedures and standards for a regulation published in the CCR. The Guidelines incorporated by reference into section 1399.15 of title 16 of the CCR are subject to the same procedures and standards as a regulation.

On April 20, 2009, the Office of Administrative Law disapproved the above referenced regulatory action because the Guidelines fail to comply with the clarity and necessity standards of Government Code section 11349.1. This disapproval decision contains examples of some of the identified issues, but is not exhaustive. Upon resubmission of this matter, OAL reserves the right to conduct a complete review pursuant to the Administrative Procedure Act ("APA") for compliance with the procedural and substantive requirements of Chapter 3.5 (commencing with section 11340), Part 1, Division 3, Title 2, of the Government Code. All APA issues must be resolved prior to OAL's approval.

Date: April 27, 2009

Elizabeth A. Heidig  
Staff Counsel

for: SUSAN LAPSLEY  
Director

Original: Steven Hartzell, Executive Director  
cc: Elsa Ybarra

**SUMMARY OF REGULATORY  
ACTIONS**

**REGULATIONS FILED WITH  
SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2009-0319-01  
BOARD OF EQUALIZATION  
Medicines and Medical Devices

This action amends existing provisions governing the application of sales and use tax to "Medicines or Medical Devices" by clarifying that no tax applies to any "permanently implantable articles" including an implant's interdependent internal and external components which operate together as one device in and on the person in whom the device is implanted, unless such device is specifically excluded from the definition of "medicines".

Title 18  
California Code of Regulations  
AMEND: 1591  
Filed 04/29/2009  
Effective 05/29/2009  
Agency Contact:  
Richard Bennion (916) 445-2130

File# 2009-0417-01  
BOARD OF OPTOMETRY  
Optometry Fee Increase

This is the resubmission of an action that would increase various application, renewal and penalty fees collected by the Board to fund its administration of the optometry licensing program.

Title 16  
California Code of Regulations  
AMEND: 1524  
Filed 04/28/2009  
Effective 04/28/2009  
Agency Contact: Andrea Leiva (916) 575-7173

File# 2009-0316-02  
BOARD OF PHARMACY  
Disciplinary Guidelines

This action updates the Board's 113 page Manual of Disciplinary Guidelines incorporated by reference in 16 CCR 1760.

Title 16  
California Code of Regulations  
AMEND: 1760  
Filed 04/27/2009  
Effective 05/27/2009  
Agency Contact: Carolyn Klein (916) 574-7913

File# 2009-0414-04  
CALIFORNIA CULTURAL AND HISTORICAL  
ENDOWMENT  
Conflict of Interest Code

The California Cultural and Historical Endowment is amending its conflict of interest code found at title 2, div. 8, ch. 111, sec. 59560, California Code of Regulations. The Fair Political Practices Commission approved the amendment for filing on April 3, 2009.

Title 2  
California Code of Regulations  
AMEND: div. 8, ch. 111, section 59560  
Filed 04/28/2009  
Effective 05/28/2009  
Agency Contact: Victor Pong (916) 445-9595

File# 2009-0312-01  
CALIFORNIA ENERGY COMMISSION  
Alternative & Renewable Fuel & Vehicle Technology Program

This rulemaking action implements the Alternative and Renewable Fuel and Vehicle Technology Program established by AB 118, Chapter 750 of 2007, and AB 109, Chapter 313 of 2008. The rulemaking describes program proposals that will receive preferences in the awarding of program funds. It establishes program sustainability goals and criteria which will be used to evaluate applications. It establishes certain funding restrictions on activities already required by law. It describes the purpose and requirements for the Investment Plan that must be created by the Commission in consultation with an Advisory Body. And it describes how the Advisory Body will be created as well as its duties and operations.

Title 20  
California Code of Regulations  
ADOPT: 3100, 3101, 3101.5, 3102, 3103, 3104, 3105, 3106, 3107, 3108  
Filed 04/22/2009  
Effective 04/22/2009  
Agency Contact: Aleecia Macias (916) 654-4526

File# 2009-0414-01  
CALIFORNIA GAMBLING CONTROL  
COMMISSION  
Interim Approval of Bingo Card-Minding Devices

This emergency regulatory action amends the existing regulatory provisions on approval of card-minding devices to clarify the order to show cause procedure and make other clarifying changes to the application.

Title 4  
California Code of Regulations  
AMEND: 12482  
Filed 04/24/2009  
Effective 04/24/2009  
Agency Contact: James Allen (916) 263-4024

File# 2009-0414-02  
CALIFORNIA GAMBLING CONTROL  
COMMISSION  
Remote Caller Bingo Licensing; Recognition of Organizations

This emergency action adopts a program for the interim licensing of persons involved in manufacture and other activities related to bingo card minding devices and remote caller bingo used for charitable fundraising, interim licensing and work permits for employees and the determination of eligibility of charitable organizations to conduct remote caller bingo.



**Title 4**

California Code of Regulations

ADOPT: 12480, 12492, 12494, 12496, 12498, 12499, 12501, 12502, 12504 AMEND: 12482

Filed 04/24/2009

Effective 04/24/2009

Agency Contact: James Allen (916) 263-4024

File# 2009-0420-01

DEPARTMENT OF FOOD AND AGRICULTURE

Light Brown Apple Moth Interior Quarantine

This emergency regulatory action will create a new regulated area in the Napa area of Napa County of approximately 19 square miles and a new area in the Hollister area of San Benito County of approximately 16 square miles. This action will also create a new regulated area in the Healdsburg area of Sonoma County of approximately 16 square miles and in the Cotati and Rohnert Park areas of Sonoma County of approximately 13 square miles and the regulated area of Napa and Sonoma counties by approximately 33 square miles. This action will also expand the regulated area of Alameda County by approximately 14 square miles. These regulated areas are for the light brown apple moth "LBAM" ("Epiphyas postvittana") due to recent findings of the pest. The effect of this amendment of the regulation is to establish the authority for the State to perform quarantine activities against LBAM in these additional areas.

**Title 3**

California Code of Regulations

AMEND: 3434(b)

Filed 04/27/2009

Effective 04/27/2009

Agency Contact:

Stephen S. Brown (916) 654-1017

File# 2009-0326-01

DEPARTMENT OF PUBLIC HEALTH

Transportation of Radioactive Material

This regulatory action makes changes to the regulations on the transportation of radioactive material to be compatible with federal changes made by the Nuclear Regulatory Commission.

**Title 17**

California Code of Regulations

AMEND: 30100, 30346.1, 30373

Filed 04/24/2009

Effective 05/24/2009

Agency Contact:

Barbara S. Gallaway (916) 440-7689

File# 2009-0417-03

FISH AND GAME COMMISSION

Incidental Take of Pacific Fisher During Candidacy

The Fish and Game Commission adopts as an emergency action section 749.5 in Title 14 of the California Code of Regulations to provide for the incidental take of Pacific fisher during its candidacy in accordance with Fish and Game Code section 2084.

**Title 14**

California Code of Regulations

ADOPT: 749.5

Filed 04/27/2009

Effective 04/27/2009

Agency Contact:

Sherrie Fonbuena (916) 654-9866

File# 2009-0414-03

STATE ALLOCATION BOARD

Leroy F. Greene School Facilities Act of 1998; Charter & COS Programs

On December 17, 2008, the State's Pooled Money Investment Board took action to temporarily halt disbursing cash from the State's Pooled Money Investment Account (PMIA) for capital projects, including school construction projects because of the State's financial situation. The Office of Public School Construction (OPSC) utilizes cash from the PMIA to release State funds for school construction projects that have been approved by the State Allocation Board (SAB). Until further notice the OPSC will be unable to release state funds for approved school construction projects. This emergency regulatory action will allow the SAB to make a finding that preliminary apportionments under the Charter School Facilities Program (CSFP) and the Critically Overcrowded School Facilities Program (COS Program) are "inactive." This will temporarily suspend the time period for conversion to final apportionment under these programs. This period is four years from the date of the preliminary apportionment plus an allowable one-year extension upon SAB approval. When State financing again becomes available for bond-funded projects, the time period will resume as it existed on December 17, 2008. This emergency regulatory action includes the definition for the terms "Inactive Preliminary Apportionment" and "Inactive Preliminary Charter School Apportionment," and the criteria to be met in order for SAB to make a finding that an apportionment is "inactive."

**Title 2**

California Code of Regulations

ADOPT: 1859.148.2, 1859.166.2 AMEND: 1859.2, 1859.121, 1859.164.2, 1859.197

Filed 04/22/2009

Effective 04/22/2009

Agency Contact: Robert Young (916) 445-0083

**CCR CHANGES FILED  
WITH THE SECRETARY OF STATE  
WITHIN November 26, 2008 TO  
April 29, 2009**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

**Title 1**

01/20/09 AMEND: 260  
01/20/09 AMEND: Appendix A, Std. Form 400

**Title 2**

04/28/09 AMEND: div. 8, ch. 111, section 59560  
04/22/09 ADOPT: 1859.148.2, 1859.166.2  
AMEND: 1859.2, 1859.121, 1859.164.2,  
1859.197  
03/05/09 AMEND: 18704  
02/17/09 AMEND: 51.3  
02/02/09 AMEND: 18402, 18450.3  
01/30/09 ADOPT: 18427.5  
01/30/09 ADOPT: 18421.8, 18521.5 AMEND:  
18401  
01/27/09 AMEND: 2294  
01/26/09 AMEND: 1859.104.1  
01/21/09 ADOPT: 1859.184.1 AMEND: 1859.2,  
1859.103, 1859.184  
01/12/09 AMEND: div. 8, ch. 24, secs. 45100,  
45127, 45128  
01/08/09 ADOPT: 18420.1  
01/08/09 ADOPT: 18944.3 AMEND: 18944.1  
12/30/08 AMEND: 714  
12/29/08 ADOPT: 2298  
12/15/08 AMEND: 17463, 17470, 17519  
12/09/08 ADOPT: 25100  
12/08/08 AMEND: 1700

**Title 3**

04/27/09 AMEND: 3434(b)  
04/20/09 AMEND: 6452.2  
03/30/09 AMEND: 3434(b)  
03/25/09 AMEND: 6860  
03/23/09 AMEND: 3423(b)  
03/19/09 ADOPT: 1210, 1211, 1212, 1213, 1214,  
1215, 1216, 1217, 1218, 1219, 1220,  
1221, 1222.1, 1222.4, 1209, 1209.1,  
1245.1, 1245.2, 1245.3, 1245.4, 1260.2,  
1269, 1269.1, 1269.2, 1271 AMEND:  
1200, 1201, 1202, 1204, 1205, 1206,  
1207, 1208, 1222, 1223, 1223.1, 1235,

1236, 1238, 1239, 1240, 1241, 1242,  
1243, 1244, 1245, 1245.1, 1245.2,  
1245.3, 1245.4, 1245.5, 1245.6, 1245.7,  
1245.8, 1245.9, 1245.10, 1245.11,  
1245.12, 1245.13, 1245.14, 1245.15,  
1245.16, 1246, 1247, 1248, 1249, 1250,  
1251, 1252, 1253, 1254, 1255, 1256,  
1257, 1258, 1259, 1260, 1260.1, 1261,  
1262, 1263, 1264, 1265, 1266, 1267,  
1268, 1269, 1270 REPEAL: 1203, 1210,  
1211, 1212, 1213, 1214, 1215, 1216,  
1217, 1218, 1219, 1220, 1221, 1224,  
1225, 1226, 1227, 1228, 1229, 1230,  
1231, 1237

03/18/09 AMEND: 3435(b)  
03/10/09 AMEND: 3434  
03/05/09 AMEND: 3591.20(a)  
03/04/09 AMEND: 3435  
02/27/09 AMEND: 3434(b)  
02/26/09 AMEND: 850  
02/19/09 AMEND: 3434(b)  
02/13/09 AMEND: 3406(b)  
02/10/09 AMEND: 3060.4(a)(1)(C)(1), 3652(k)  
02/05/09 AMEND: 3434(b)  
02/02/09 AMEND: 3406(b)  
01/21/09 ADOPT: 3591.22(a), 3591.22(b),  
3591.22(c), 3591.22(d)  
01/21/09 ADOPT: 3591.21(a), 3591.21(b),  
3591.21(c)  
01/20/09 REPEAL: 3664, 3665, 3666, 3667, 3668,  
3669  
01/14/09 AMEND: 3434(b)  
01/13/09 AMEND: 3434(b)  
01/12/09 AMEND: 3589(a)  
12/30/08 AMEND: 3417(b)  
12/18/08 AMEND: 3417(b)  
12/18/08 AMEND: 3406(b)  
12/16/08 AMEND: 1358(b)  
12/12/08 AMEND: 3434(b)  
12/10/08 AMEND: 3589  
12/04/08 AMEND: 3435(b)  
11/26/08 AMEND: 3406(b)

**Title 4**

04/24/09 ADOPT: 12480, 12492, 12494, 12496,  
12498, 12499, 12501, 12502, 12504  
AMEND: 12482  
04/24/09 AMEND: 12482  
03/23/09 AMEND: 10175, 10176, 10177, 10182,  
10185, 10187, 10188, 10189, 10190  
03/11/09 AMEND: 1865  
03/10/09 ADOPT: 12388, 12410  
03/05/09 ADOPT: 2066  
03/05/09 ADOPT: 1504.5 AMEND: 1481, 1486  
03/04/09 AMEND: 2073

02/23/09	ADOPT: 8102, 8102.1, 8102.2, 8102.3, 8102.5, 8102.6, 8102.7, 8102.8, 8102.9, 8102.11, 8102.12, 8102.13, 8102.14, 8102.15 AMEND: 8090, 8091, 8092, 8093, 8094, 8095, 8096, 8097, 8098, 8099, 8100, 8101 REPEAL: 8102.10	15203.5, 15203.6, 15203.7, 15203.8, 15203.9, 15203.10, 15204, 15205, 15210, 15210.1, 15210.2, 15210.3, 15211, 15211.1, 15211.2, 15215, 15230, 15251, 15353, 15360, 15405, 15470, 15471, 15472, 15473, 15474, 15475, 15476, 15477, 15478, 15479, 15480, 15481, 15601.7
02/13/09	ADOPT: 12362	
02/11/09	ADOPT: 8078.1 AMEND: 8070, 8072, 8076, 8078	03/02/09 AMEND: 3209, 3299, 4885, 5049, 5085, 5152, 5193, 5207, 5215, 5297, 5299, 5302, 5304, 5449, 6402, 6503, 6600
01/13/09	ADOPT: 4027, 4027.1, 4027.2, 4027.3, 4027.4, 4027.5	02/25/09 REPEAL: 10116.4, 10122, 10122.1, 10123, 10123.2, 10123.3, 10124, 10124.1, 10125, 10125.1, 10125.2, 10125.3, 10126, 10127, 10127.1, 10127.2, 10127.3, 10128, 10129, 10129.1, 10130, 10131, 10131.1, 10131.2, 10132, 10132.1, 10133, 10133.2, 10133.4, 10133.10, 10133.11, 10133.12, 10133.13, 10133.14, 10133.15, 10133.16, 10133.17, 10133.18, 10133.19, 10133.20, 10133.21, 10133.22
12/29/08	AMEND: 12482	02/18/09 AMEND: 3664, 3732, 3737, 3944, 4186, 4307.1, 4345, 4353, 4354
<b>Title 5</b>		02/13/09 AMEND: 3336, 3650, 3653
03/27/09	AMEND: 3001, 3051, 3060, 3061, 3062, 3063, 3064, 3065, 3066, 3067, 3068, 3069, 3070	02/09/09 AMEND: 3231, 3277, Appendix B Following Section 3299, Appendix A following Section 3326, 3340, 3341, 3575, Appendices A, B, C, D, E, F, G following Section 3583
03/05/09	AMEND: 80225	01/29/09 AMEND: 4994
02/17/09	AMEND: 80413, 80487	01/28/09 AMEND: 4999
02/04/09	ADOPT: 9800, 9810, 9820, 9830	01/20/09 AMEND: Appendix B following sections 1529, 5208, 8358
01/20/09	ADOPT: 9517.1	01/15/09 AMEND: 2500.7
01/05/09	AMEND: 80004	01/13/09 ADOPT: 29, 31.1, 31.3, 31.7, 32.6, 36.5, 41.5, 41.6, 41.7, 63, 120, 121, 122, 123, 124 AMEND: 1, 10, 11, 11.5, 12, 13, 14, 15, 16, 17, 18, 19, 20, 30, 30.5, 31, 31.5, 32, 33, 34, 35, 35.5, 36, 38, 39, 39.5, 40, 41, 43, 44, 45, 46, 46.1, 47, 49, 49.2, 49.4, 49.6, 49.8, 49.9, 50, 51, 52, 54, 55, 56, 57, 60, 61, 62, 65, 100, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 116, 117, 118, 119, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159 REPEAL: 10.5, 32.5, 37, 53, 70, 71, 72, 73, 74, 75, 76, 76.5, 77, 101, 114, 115
12/09/08	ADOPT: 18131.1 AMEND: 18131	12/22/08 ADOPT: 16404, 16430, 16435.5 AMEND: 16421, 16422, 16423, 16424, 16425, 16426, 16427, 16428, 16429, 16431, 16432, 16434, 16435, 16436, 16437, 16439
<b>Title 8</b>		
04/20/09	AMEND: 10100.2, 10101.1, 10103.2, 10104, 10105, 10106.1, 10106.5, 10107.1, 10108, 10109, 10111.1, 10111.2, 10112, 10113.4, 10113.5, 10114.2, 10115, 10115.1, 10115.2	
04/06/09	ADOPT: 227, 314, 389 AMEND: 281, 303, 323, 368, 523	
04/01/09	ADOPT: 2710.1, 2716.1, 2718, 2718.1, 2738, 2739.0, 2739.4, 2742.0, 2742.1, 2742.2, 2742.3, 2745.0, 2745.1, 2749.2, 2754.1, 2754.2, 2796, 2799.1, 2799.2, 2799.3, 2799.4, 2799.5, 2799.6, 2812.2, 2812.3, 2832, 2833.1, 2833.2, 2882.2, 2985.0, 2985.1, 2985.2, 2987.0, 2987.1, 2989.0, 2989.1 AMEND: 2700, 2706, 2707, 2710, 2712, 2714, 2715, 2725, 2735, 2739.1, 2743, 2745.2, 2749.1, 2753, 2790, 2791, 2792, 2795, 2797, 2799.0, 2805, 2810, 2812.1, 2816, 2819, 2820, 2833, 2845, 2847, 2863, 2873, 2874, 2875, 2880, 2882.1, 2890, 2893, 2908, 2910, 2931, 2932, 2933, 2934, 2935, 2946, 2974 REPEAL: 2742	
03/04/09	AMEND: 3248	
03/02/09	ADOPT: 15475.1, 15475.2, 15475.3, 15482, 15482.1, 15482.2, 15483, 15484, 15485, 15486, 15486.1, 15487, 15488, 15489, 15489.1, 15490, 15490.1, 15491, 15496, 15497, 15497.1, 15498, 15499, 15499.5 AMEND: 15201, 15203, 15203.1, 15203.2, 15203.3, 15203.4,	

12/02/08	AMEND: 2940.6, Appendix C	12/22/08	AMEND: 553.70
12/01/08	AMEND: 5198(f)(2)(A)	12/05/08	AMEND: 110.04
<b>Title 9</b>		12/01/08	AMEND: 1956.8
02/06/09	ADOPT: 4000, 4005	<b>Title 13, 17</b>	
01/07/09	AMEND: 7400	12/03/08	AMEND: 2299.3, 93118.3
<b>Title 10</b>		<b>Title 14</b>	
03/27/09	AMEND: 2498.6 (Exhibit C)	04/27/09	ADOPT: 749.5
03/25/09	AMEND: 2661.3, 2661.4, 2662.1	04/08/09	AMEND: 2245, 2320
03/23/09	AMEND: 2498.6	03/18/09	AMEND: 632
02/26/09	AMEND: 2699.6805	03/16/09	ADOPT: 20004.1, 20009.1, 20009.2
02/23/09	AMEND: 2318.6, 2353.1		AMEND: 20000, 20001, 20002, 20003, 20004, 20005, 20008, 20009
02/23/09	AMEND: 2498.6	03/04/09	AMEND: 2000, 2090, 2516, 2530, 2620, 2630, 2660, 2670, 2720, 2730
02/19/09	AMEND: 5000, 5110, 5111, 5112, 5113, 5114, 5116, 5117 REPEAL: 5119	03/03/09	ADOPT: 27.32 AMEND: 27.20, 27.25, 27.30, 27.35, 27.40, 27.45, 27.50, 27.51, 28.26, 28.27, 28.28, 28.29, 28.48, 28.49, 28.51, 28.52, 28.53, 28.54, 28.55, 28.56, 28.57, 28.58
02/05/09	ADOPT: 2308.1, 2308.2, 2308.3	03/02/09	AMEND: 791.7(a), Form FG OSPR-1924, Form FG OSPR-1925, Form FG OSPR-1972
01/15/09	AMEND: 2699.6707, 2699.6711, 2699.6721, 2699.6723, 2699.6725, 2699.6809	02/25/09	AMEND: 1038, 1052
01/14/09	AMEND: 2698.100, 2698.200, 2698.201, 2698.206, 2698.300, 2698.301	02/23/09	ADOPT: 749.4
01/12/09	AMEND: 2498.5	01/28/09	AMEND: 701
12/31/08	ADOPT: 2194.50, 2194.51, 2194.52, 2194.53, 2194.54, 2194.55	01/13/09	AMEND: 300
12/02/08	AMEND: 2652.1	01/12/09	ADOPT: 4970.00, 4970.01, 4970.02, 4970.03, 4970.04, 4970.05, 4970.06.1, 4970.06.2, 4970.06.3, 4970.07, 4970.07.1, 4970.07.2, 4970.08, 4970.09, 4970.10, 4970.10.1, 4970.10.2, 4970.10.3, 4970.10.4, 4970.11, 4970.12, 4970.13, 4970.14, 4970.14.1, 4970.14.2, 4970.14.3, 4970.15, 4970.15.1, 4970.15.2, 4970.15.3, 4970.15.4, 4970.16, 4970.17, 4970.18, 4970.19, 4970.19.1, 4970.19.2, 4970.19.3, 4970.19.4, 4970.19.5, 4970.19.6, 4970.20, 4970.21, 4970.22, 4970.23, 4970.23.1, 4970.23.2, 4970.24, 4970.25.1, 4970.25.2, 4970.25.3, 4970.26 REPEAL: 4970.49, 4970.50, 4970.51, 4970.52, 4970.53, 4970.54, 4970.55, 4970.56, 4970.57, 4970.58, 4970.59, 4970.60, 4970.61, 4970.62, 4970.63, 4970.64, 4970.65, 4970.66, 4970.67, 4970.68, 4970.69, 4970.70, 4970.71, 4970.72
<b>Title 11</b>		12/31/08	AMEND: 957 REPEAL: 957.11, 957.12
04/17/09	AMEND: 30.1	12/29/08	AMEND: 243, 245 REPEAL: 241
04/01/09	ADOPT: 9056, 9057, 9058, 9059, 9060	12/17/08	ADOPT: 1032 AMEND: 895, 895.1, 929.1, 949.1, 969.1, 1032.7, 1032.9, 1037.3, 1054.5, 1055.3, 1056.3, 1090.1, 1090.2, 1090.4, 1090.6, 1090.17,
	AMEND: 1018		
04/01/09	ADOPT: 9050, 9051, 9052, 9053, 9054, 9055 REPEAL: 1002		
03/30/09	ADOPT: 30.15		
03/03/09	AMEND: 9070, 9077		
02/18/09	REPEAL: 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327		
02/03/09	ADOPT: 64.7		
01/28/09	AMEND: 51.19		
12/31/08	AMEND: 1005(d)		
12/02/08	AMEND: 1005, 1007, 1008		
<b>Title 12</b>			
02/26/09	ADOPT: 800, 800.1, 801, 802, 803, 804, 805, 806, 807, 808, 809		
01/27/09	AMEND: 501		
01/12/09	AMEND: 503		
<b>Title 13</b>			
03/18/09	ADOPT: 1962.1 AMEND: 1900, 1962, 1962.1 renumber as 1962.2		
03/10/09	ADOPT: 1160.6 AMEND: 1160.3, 1160.4		
02/26/09	ADOPT: 29.00		
02/05/09	ADOPT: 20.05 AMEND: 20.04		
02/05/09	AMEND: 25.08		
01/20/09	AMEND: 2700, 2701, 2702, 2703, 2704, 2705, 2706, 2708, 2709, 2710		



	1092.03, 1092.04, 1092.06, 1092.18, 1104.3 REPEAL: 1032	01/09/09	ADOPT: 2504.1, 2517.5, 2564.1, 2575.5 AMEND: 2537, 2540.6, 2590, 2592.6
12/11/08	AMEND: Division 5, Appendix M	12/30/08	AMEND: 1387
12/10/08	ADOPT: 120.1, 120.2 AMEND: 120, 120.3 REPEAL: 120.01	12/18/08	AMEND: 3340.28, 3340.29
11/26/08	AMEND: 1257	12/17/08	AMEND: 4170
<b>Title 15</b>		12/11/08	AMEND: 1336
04/20/09	AMEND: 1004, 1006, 1007, 1008, 1012, 1013, 1018, 1027, 1028, 1029, 1032, 1040, 1044, 1045, 1046, 1055, 1056, 1059, 1063, 1066, 1082, 1101, 1105, 1144, 1151, 1161, 1209, 1217, 1230, 1241, 1243, 1245, 1247, 1262, 1272	12/09/08	AMEND: 1399.25 REPEAL: 1399.26
04/02/09	ADOPT: 3334 AMEND: 3000	<b>Title 17</b>	
02/05/09	ADOPT: 3077, 3077.1, 3077.2, 3077.3, 3077.4 AMEND: 3000, 3043.6, 3375	04/24/09	AMEND: 30100, 30346.1, 30373
02/02/09	ADOPT: 1800, 1806, 1812, 1814, 1830, 1831, 1840, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1856, 1857, 1860, 1866, 1867, 1868, 1870, 1872, 1876, 1878, 1888, 1890, 1892	03/11/09	AMEND: 93119
12/19/08	REPEAL: 4826, 4985	02/03/09	ADOPT: 100701
12/16/08	ADOPT: 3099	01/29/09	ADOPT: 33060 AMEND: 33007, 33010, 33020, 33025, 33030, 33040
12/15/08	ADOPT: 3334 AMEND: 3000	01/28/09	AMEND: 950.2
12/11/08	AMEND: 3323	01/28/09	ADOPT: 1832.5
12/09/08	AMEND: 3000, 3001, 3041.3, 3075.3, 3294.5, 3356, 3369.5, 3370, 3376.1, 3382, 3383, 3393, 3401, 3402, 3405, 3406, 3407, 3408, 3410, 3411, 3414, 3430, 3432, 3433	12/30/08	AMEND: 30195.1
11/26/08	ADOPT: 1700, 1706, 1712, 1714, 1730, 1731, 1740, 1747, 1747.5, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1756, 1757, 1760, 1766, 1767, 1768, 1770, 1772, 1776, 1778, 1788, 1790, 1792	12/26/08	ADOPT: 100501
<b>Title 16</b>		12/02/08	ADOPT: 95100, 95101, 95102, 95103, 95104, 95105, 95106, 95107, 95108, 95109, 95110, 95111, 95112, 95113, 95114, 95115, 95125, 95130, 95131, 95132, 95133
04/28/09	AMEND: 1524	<b>Title 18</b>	
04/27/09	AMEND: 1760	04/29/09	AMEND: 1591
04/03/09	AMEND: 3830	04/06/09	ADOPT: 25113 AMEND: 25111
03/24/09	ADOPT: 1398.12	03/19/09	AMEND: 23701, 23772
03/20/09	AMEND: 1937, 1950, 1950.5, 1953	03/11/09	AMEND: 1506, 1524
03/11/09	AMEND: 1715, 1784, Form 17M-13, Form 17M-14, Form 17M-26	03/11/09	AMEND: 1705
03/04/09	AMEND: 4181	02/05/09	AMEND: 1620
03/04/09	AMEND: 1351.5, 1352	01/02/09	AMEND: 1702.5
03/04/09	ADOPT: 389	12/01/08	AMEND: 1602.5
03/04/09	AMEND: 998	<b>Title 20</b>	
03/04/09	AMEND: 950.2	04/22/09	ADOPT: 3100, 3101, 3101.5, 3102, 3103, 3104, 3105, 3106, 3107, 3108
03/03/09	AMEND: 305 REPEAL: 306.1	<b>Title 21</b>	
02/11/09	AMEND: 950.3	11/26/08	AMEND: 6633.2
02/03/09	ADOPT: 2068.7	<b>Title 22</b>	
01/28/09	AMEND: 950.2	04/21/09	AMEND: 51543
01/28/09	ADOPT: 1832.5	03/12/09	AMEND: 51517
		03/03/09	ADOPT: 63000.48, 63051, 63052 AMEND: 63000.16, 63000.25, 63000.43, 63000.46, 63000.66, 63000.68, 63000.77, 63010, 63011, 63013, 63020, 63021, 63029, 63030, 63040, 63050, 63055 REPEAL: 63051
		02/04/09	ADOPT: 66260.201, 66260.202, 66273.7, 66273.33.5, 66273.41, 66273.70, 66273.71, 66273.72, 66273.73, 66273.74, 66273.75, 66273.76, and 66273.77 AMEND: 66260.10, 66260.23, 66261.4, 66261.9, 66261.50, appendix X of chapter 11, 66264.1, 66265.1, 66273.1, 66273.2,

	66273.3, 66273.4, 66273.5, 66273.6, 66273.8, 66273.9, 66273.30, 66273.31, 66273.32, 66273.33, 66273.34, 66273.35, 66273.36, 66273.37, 66273.38, 66273.39, 66273.40, 66273.51, 66273.52, 66273.53, 66273.54, 66273.55, 66273.56, 66273.60, 66273.61, 66273.62, and 67100.2 REPEAL: 6 6273.7.1, 66273.7.2, 66273.7.3, 66273.7.4, 66273.7.5, 66273.7.6, 66273.7.7, 66273.7.8, 66273.7.9, 66273.7.10, 66273.10, 66273.11, 66273.12, 66273.13, 66273.14, 66273.15, 66273.16, 66273.17, 66273.18, 66273.19, 66273.20, 66273.21, 66273.41, 66273.70, 66273.80, 66273.81, 66273.82, 66273.83, 66273.84, 66273.85, 66273.86, 66273.87, 66273.88, 66273.89, and 66273.90 Articles Affected: Amend article 3; Adopt new article 4; Renumber old article 4 to article 5; Renumber old article 5 to article 6; Repeal old article 6; Repeal old article 7 and adopt new article 7.	01/23/09 AMEND: 51000.6.1, 51000.8, 51000.16, 51000.20, 51000.20.1, 51000.24.1, 51000.25.2, 51000.30, 51000.50, 51000.51, 51000.52, 51000.53, 51000.55, 51000.60 01/22/09 ADOPT: 72038, 72077.1, 72329.1 AMEND: 72077, 72329 01/15/09 AMEND: 101115 01/06/09 AMEND: 66270.60, 67450.30 12/09/08 AMEND: 51521 12/09/08 AMEND: 100031, 100032, 100033, 100034, 100035, 100036, 100037, 100038, 100039, 100040, 100042, 100043 REPEAL: 100041
		<b>Title 23</b> 02/19/09 ADOPT: 3939.35 02/03/09 AMEND: 3989 01/07/09 ADOPT: 3939.34 01/05/09 ADOPT: 3006 12/09/08 ADOPT: 3939.33 12/01/08 ADOPT: 3949.6
		<b>Title 25</b> 02/11/09 ADOPT: 4200, 4202, 4204, 4206, 4208, 4210, 4212, 4214, 4216 01/21/09 ADOPT: 1322, 1426, 2426 AMEND: 1000, 1002, 1004, 1005, 1006, 1018, 1020, 1020.1, 1020.6, 1032, 1183, 1210, 1211, 1212, 1216, 1312, 1320, 1333, 1429, 1432, 1438, 1468, 1474, 1504, 1612, 1752, 1756, 2002, 2004, 2005, 2006, 2018, 2183, 2210, 2211, 2212, 2216, 2312, 2327, 2429, 2438, 2474, 2504, 2612, 2752, 2756 12/05/08 ADOPT: 7150, 7151, 7152, 7153, 7154, 7155, 7156, 7157, 7158, 7159, 7160
		<b>Title 27</b> 04/07/09 AMEND: 25705(b) 02/18/09 AMEND: 20921 01/05/09 AMEND: 27001 01/05/09 AMEND: 27000 12/02/08 AMEND: 25805(b)
		<b>Title MPP</b> 02/09/09 AMEND: 42-721, 42-780, 44-303, 44-307, 44-318, 82-182 02/05/09 ADOPT: 40-037, 70-101, 70-102, 70-103, 70-104, 70-105 AMEND: 30-755, 30-770, 40-105, 42-430, 42-431, 42-433, 42-711, 49-020, 49-030, 49-060, 63-403, 69-201, 69-202, 69-205
01/29/09	AMEND: 97174	
01/28/09	AMEND: 41508, 41509, 41510, 41511, 41512, 41514, 41515, 41515.1, 41515.2, 41516, 41516.1, 41516.3, 41517, 41517.3, 41517.5, 41517.7, 41518, 41518.2, 41518.3, 41518.4, 41518.5, 41518.7, 41518.8, 41518.9, 41519, 41610, 41611, 41670, 41671, 41672, 41700, 41800, 41811, 41815, 41819, 41823, 41827, 41831, 41832, 41835, 41839, 41844, 41848, 41852, 41856, 41864, 41866, 41868, 41872, 41900, 42000, 42050, 42075, 42110, 42115, 42120, 42125, 42130, 42131, 42132, 42140, 42160, 42180, 42305, 42320, 42321, 42326, 42330, 42400, 42401, 42402, 42403, 42404, 42405, 42406, 42407, 42420, 42700, 42701, 42702, 42703, 42705, 42706, 42707, 42708, 42709, 42710, 42711, 42712, 42713, 42714, 42715, 42716, 42717, 42718, 42719, 42720 REPEAL: 42800, 42801	
01/26/09	AMEND: 51313.6, 51320, 51476, 51510, 51510.1, 51510.2, 51510.3, 51511, 51513, 51520 REPEAL: 51513.5, 51520.1, 51520.2, 59998	